

Page 1	Page 3
<p>STATE OF ILLINOIS IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT COUNTY OF MCLEAN -----x JANET SHIPLEY and JAMES SHIPLEY,</p> <p>Plaintiffs, Case No. 10-L-38 vs. PNEUMO ABEX CORPORATION, et al., Defendants. -----x DEPOSITION of BARRY CASTLEMAN, ScD, taken by Defendants at the offices of Weitz &amp; Luxenberg, 700 Broadway, New York, New York, on Tuesday, September 28, 2010, commencing at 12:04 p.m., before Androniki Samaras, a Shorthand (Stenotype) Reporter and Notary Public within and for the State of New York.</p>	<p>1 Castleman, ScD 2 B A R R Y I. C A S T L E M A N, ScD, called as a 3 witness, having been first duly sworn by 4 Androniki Samaras, a Notary Public within and for 5 the State of New York, was examined and testified 6 as follows: 7 EXAMINATION 8 BY MR. FISCHER: 9 Q. Dr. Castleman, my name is 10 Matt Fischer. I'm going to start today. 11 Mr. Modesitt asked me to begin, so I'm going to 12 do that. I represent Owens-Illinois, you 13 probably remember. 14 Could you tell me, have you done 15 any new research with regards to Owens-Illinois 16 in the last year? 17 A. No. 18 Q. Have you done any new reading 19 involving Owens-Illinois in the last year? 20 A. Nothing comes to mind. 21 Q. Have you refreshed yourself about 22 any Owens-Illinois documents in any way over the 23 course of the last year? 24 A. I don't think since the last time 25 we were in trial I've done that.</p>
Page 2	Page 4
<p>1 A P P E A R A N C E S: 2 JAMES WALKER, LTD. 3 Attorney for Plaintiffs 4 207 West Jefferson Street, Suite 200 Bloomington, Illinois 61701 5 6 BY: JAMES WALKER, Esq. 7 8 WILKINSON, GOELLER, MODESITT, WILKINSON &amp; DRUMMY, LLP 9 Attorneys for Defendant Pneumo Abex, LLC 333 Ohio Street Terre Haute, Indiana 47807 10 11 BY: RAYMOND H. MODESITT, Esq. 12 13 SCHIFF HARDIN, LLP Attorneys for Defendant Owens-Illinois 6600 Sears Tower Chicago, Illinois 60606 14 15 BY: MATTHEW J. FISCHER, Esq. 16 17 BOYLE BRASHER, LLC Attorneys for Defendant Illinois Central Railroad 5000 West Main Street 18 P.O. Box 23560 Belleville, Illinois 62223-0560 19 20 BY: MARK R. KURZ, Esq. 21 22 23 24 25</p>	<p>1 Castleman, ScD 2 Q. That would, by my count, go back to 3 about June or July? 4 A. Sounds about right. 5 Q. So let me just push it back for 6 calendar year 2010, have you done anything new 7 in any way to refresh yourself in any way about 8 Owens-Illinois during that period of time? 9 A. Nothing I could think of, except at 10 trial. 11 Q. In what way did the trial cause you to refresh yourself about OI? 12 A. Probably not much. I mean, we basically go over very few documents relating to OI in these conspiracy trials. 13 Q. Have you gone over with any lawyers any documents involving Owens-Illinois that were not discussed at the trial in June? 14 A. I don't think so. 15 MR. WALKER: Excuse me. I would say this, Matt, that in a couple -- in our conversation before the dep, I told Dr. Castleman that I have located some documents which I would call the Illinois</p>

Page 5	Page 7
<p>1                   Castleman, ScD      2        Manufacturers' Association      3        documents, which -- in which OI      4        appears to have been a member and OI      5        people have done things, but I have      6        not shown those documents to him.      7                   MR. FISCHER: Okay.      8        Q. Why don't we do this this way,      9        Dr. Castleman: Mr. Walker has asked you to be a      10      witness in the Shipley case; is that your      11      understanding?      12      <b>A. Right.</b>      13      Q. And it has been some time, at least      14     since I have taken your deposition in the case,      15     in which Mr. Walker represented the plaintiffs.      16      Is there anything that Mr. Walker      17     has brought to your attention that he would like      18     you to focus on in the course of your work in      19     this case?      20      <b>A. As to OI, it's not anything in</b>      21      <b>particular, no.</b>      22      Q. And now let me expand it out beyond      23     Owens-Illinois. Is there anything that      24     Mr. Walker brought to your attention that he      25     would like you to be thinking about during the</p>	<p>1                   Castleman, ScD      2        24?      3                   MR. WALKER: Exhibit No. 824.      4                   BY MR. FISCHER:      5        Q. Has Mr. Walker asked you to look at      6        any other documents during the course of your      7        work in this case?      8      <b>A. No.</b>      9        Q. All right. And you heard      10      Mr. Walker explain that he had had a      11      conversation with you about the Illinois      12      Manufacturers' Association; is that right?      13      <b>A. Yes.</b>      14      Q. What do you know, Dr. Castleman,      15      about the Illinois Manufacturers' Association?      16      <b>A. Well, there were -- there were</b>      17      <b>lawsuits, there were civil lawsuits and workers'</b>      18      <b>compensation claims for people who had</b>      19      <b>asbestosis and silicosis in the mid-'30s in</b>      20      <b>Illinois.</b>      21      <b>And as I understand it, the civil</b>      22      <b>courts and the workers' compensation agencies</b>      23      <b>rejected the claims under the terms of laws in</b>      24      <b>which they operated, and this provoked the</b>      25      <b>legislature in Illinois to revisit and revise</b></p>
Page 6	Page 8
<p>1                   Castleman, ScD      2        course of your retention in this matter?      3                   MR. WALKER: Without saying I      4        asked Barry to think about anything,      5        I just alerted him to the fact that      6        I have made an exhibit of the      7        September 16, 1959 JM Board of      8        Directors meeting agenda, and that I      9        was going to give him a copy at the      10      deposition, which I'm now giving it      11      to him (handing).      12      THE WITNESS: (Perusing      13      document.)      14      Q. Okay. I see -- well,      15      Dr. Castleman, could you confirm that Mr. Walker      16      has, in fact, given you the September 16, 1959      17      Board of Director meeting minutes of the Johns      18      Manville Corporation?      19      <b>A. He has.</b>      20      MR. WALKER: And also, that      21      it's the same Exhibit, 824, that I      22      used the other day at pretrial      23      hearings.      24      Q. Has Mr. Walker --      25      MR. MODESITT: Excuse me.</p>	<p>1                   Castleman, ScD      2        the legislation relating to workers'      3        compensation and perhaps in some ways, more      4        generally, prevention of occupational diseases.      5        <b>And that was in 1936.</b>      6        Q. Do you know when asbestosis was      7        first recognized as a compensable disease under      8        the workers' compensation scheme in the state of      9        Illinois?      10      <b>A. 1936, I believe.</b>      11      Q. And do you have any familiarity      12      with the Illinois Occupational Disease Act as      13      distinct from the Workers' Compensation Act?      14      <b>A. No, I don't have a clear</b>      15      <b>distinction in mind.</b>      16      Q. Do you know if the Illinois      17      Manufacturers' Association had any role in this      18      course of events in the 1930s that led to      19      legislation involving occupational disease      20      claims?      21      <b>A. My impression is they had a</b>      22      <b>substantial role that the affected industry</b>      23      <b>was -- worked through the Illinois</b>      24      <b>Manufacturers' Association to develop a -- kind</b>      25      <b>of a unified response to this legislative</b></p>

<p>1                   <b>Castleman, ScD</b></p> <p>2 challenge and negotiate something that would be</p> <p>3 least damaging to their business activities.</p> <p>4       Q. I'm sorry, say that last part</p> <p>5 again.</p> <p>6       <b>A. Least challenging to their business</b></p> <p>7 <b>activities, least expensive.</b></p> <p>8       Q. Would it be fair to say that it is</p> <p>9 your impression that the Illinois Manufacturing</p> <p>10 {sic} Association was involved somehow in</p> <p>11 lobbying or participating in the legislative</p> <p>12 process with regard to the development of that</p> <p>13 legislation?</p> <p>14      <b>A. Yes.</b></p> <p>15      Q. Do you know whether the Illinois</p> <p>16 Manufacturing Association played any other role</p> <p>17 in connection with that legislation?</p> <p>18      <b>A. No. I think lobbying -- lobbying</b></p> <p>19 <b>is a broad term, but I think that takes it in.</b></p> <p>20     Q. Now, you mentioned that it was your</p> <p>21 impression that industrialists had worked</p> <p>22 through the Illinois Manufacturing Association.</p> <p>23     Who do you mean to include in the</p> <p>24 term "industrialists"?</p> <p>25      <b>A. Well, I've seen lists of groups of</b></p>	<p>1                   <b>Castleman, ScD</b></p> <p>2 in some way involved.</p> <p>3       Q. Involved with John Crane?</p> <p>4       <b>A. Involved with Illinois</b></p> <p>5 <b>Manufacturers' Association in connection with</b></p> <p>6 <b>this legislation.</b></p> <p>7       Q. So the lists that you saw back in</p> <p>8 2007, you believe at least relate to the same</p> <p>9 legislation in the 1930s?</p> <p>10      <b>A. Right.</b></p> <p>11      Q. Are those lists in your possession?</p> <p>12      <b>A. No. I mean, I have them, but I</b></p> <p>13 <b>don't have them with me. They're part of a</b></p> <p>14 <b>John Crane file, probably part of the Crane Co.</b></p> <p>15 <b>file.</b></p> <p>16      Q. From what source did you obtain</p> <p>17 those lists?</p> <p>18      <b>A. I don't remember. It was just, I</b></p> <p>19 <b>think, one or two documents. And it might have</b></p> <p>20 <b>been Bobby Hatten, it might have been somebody</b></p> <p>21 <b>else, another plaintiff's attorney.</b></p> <p>22      Q. Done Johns Manville appear on any</p> <p>23 of those lists?</p> <p>24      <b>A. I don't remember seeing Johns</b></p> <p>25 <b>Manville on the list that -- I think it's only</b></p>
<p>1                   Page 10</p> <p>2                   <b>Castleman, ScD</b></p> <p>3 people that were involved, including Crane</p> <p>4 Company. And Mr. Walker tells me that Johns</p> <p>5 Manville and Owens-Illinois were also involved</p> <p>6 in some of the documented activities of this</p> <p>7 group.</p> <p>8       Q. The lists that you have seen of the</p> <p>9 groups of people involved, when did you see</p> <p>10 those lists?</p> <p>11      <b>A. Well, in connection with the case,</b></p> <p>12 <b>oh, I can -- about 2007, I think. It was a case</b></p> <p>13 <b>involving John Crane as a defendant. And I may</b></p> <p>14 <b>have seen it earlier, but there were --</b></p> <p>15 <b>John Crane claims to have lost all their</b></p> <p>16 <b>documents historically about asbestos. And so</b></p> <p>17 <b>there are questions about what they could have</b></p> <p>18 <b>known or should have known based on things like</b></p> <p>19 <b>what was going on in the state of Illinois in</b></p> <p>20 <b>the 1930s.</b></p> <p>21      And so that's where I think I saw</p> <p>22 some of these documents and focused on them. I</p> <p>23 don't recall, there weren't many documents.</p> <p>24 They simply reflect that there were various</p> <p>25 committees, including, I think, a medical</p> <p>committee of corporate representatives who were</p>	<p>1                   Page 12</p> <p>2                   <b>Castleman, ScD</b></p> <p>3 one list, and it was mostly company doctors, I</p> <p>4 believe.</p> <p>5       Q. Does Owens-Illinois appear on that</p> <p>6 list?</p> <p>7      <b>A. I don't remember.</b></p> <p>8       Q. Now, you also mentioned that Johns</p> <p>9 Manville was somehow involved in these efforts</p> <p>10 in the 1930s, and that was information that you</p> <p>11 obtained from Mr. Walker, I take it, that's</p> <p>12 information you obtained today?</p> <p>13      <b>A. Just now, yes, verbally.</b></p> <p>14       Q. Could you tell me everything that</p> <p>15 you understand about Johns Manville's</p> <p>16 involvement in this legislation in Illinois in</p> <p>17 the 1930s?</p> <p>18      <b>A. I understand that Johns Manville's</b></p> <p>19 <b>chief lawyer, Vandiver Brown, was one of the</b></p> <p>20 <b>participants, one of the corporate</b></p> <p>21 <b>representatives involved in this</b></p> <p>22 <b>manufacturing -- manufacturers' committee.</b></p> <p>23       MR. WALKER: Off the record.</p> <p>24       MR. FISCHER: Sure.</p> <p>25       (Discussion off the record.)</p>

<p style="text-align: right;">Page 13</p> <p>1                   Castleman, ScD      2 BY MR. FISCHER:      3       Q. Do you have any information about      4 what Mr. Brown's actual involvement was?      5       A. No.      6       Q. Do I understand it correctly that      7 when you say he was a participant, you mean to      8 say that he apparently was -- well, what do you      9 mean by that?      10      A. Well, I gather that his name      11 appears on some of the documents as somebody who      12 is involved as a corporate representative in      13 this connection. That would make sense.      14      They had a plant in Waukegan,      15 Illinois, Johns Manville did. They had workers'      16 compensation claims and lawsuits over asbestos      17 by the mid-1930s coming out of this plant.      18      Q. And when you say "this plant," you      19 mean the Waukegan plant, right?      20      A. Right.      21      Q. Have you seen any of the documents      22 to which you just referred?      23      A. No, not the ones naming Mr. Brown.      24      Q. Have you seen -- other than this      25 one list that you believe is in your John Crane</p>	<p style="text-align: right;">Page 15</p> <p>1                   <b>Castleman, ScD</b>      2       Q. I know that you're always kind      3 enough to make that offer, but I really find      4 that we get mixed up a little bit when we try to      5 do two things at once.      6       A. Okay. It's reference 82 on page      7 207, or at least it's noted as a source of one      8 of the abstracts I cite.      9       It's called "The Pneumokonioses      10 (Silicosis), Literature and Laws," Book III, or      11 there are three such books. The first author is      12 G.G. Davis, Chicago Medical Press, 1937. Right      13 here (indicating).      14      Q. Have you ever seen, Doctor, an      15 actual copy of the publication entitled "The      16 Pneumoconioses" --      17      A. Yes.      18      Q. -- "Literature and Laws," Book III?      19      A. Yes, I have.      20      Q. Okay. Do you recall by chance      21 where you may have seen it?      22      A. No.      23      Q. Do you have a copy of it?      24      A. No.      25      Q. You had originally said that you</p>
<p style="text-align: right;">Page 14</p> <p>1                   Castleman, ScD      2 file, have you seen any documents relating to      3 legislation in Illinois in the 1930s related to      4 occupational disease?      5       A. Well, I've seen it mentioned in      6 other places. There was a three-volume tome      7 written called "The Pneumokoniosis," with a "k,"      8 published between 1934 and 1937 by some doctors      9 in Illinois. And they went through an      10 interesting collection of writings, insurance      11 industry publications, for example, periodicals.      12 And a lot of the stuff that they compiled had to      13 do with asbestosis and silicosis and the law      14 that was being developed, or at least some of      15 the law changes that were being discussed in      16 Illinois in the mid-1930s.      17      Q. And I see that you're paging      18 through your book there. Are you looking for a      19 citation perhaps?      20      A. Just wondering if I could remember      21 where I cited that thing in the book. It's      22 probably under "compensation." Let's take a      23 look. (Perusing book.)      24      You can go on with your questions      25 while I do this.</p>	<p style="text-align: right;">Page 16</p> <p>1                   Castleman, ScD      2 thought it was "Pneumokonioses" with a "k." It      3 looks like that one is with a "c."      4       Do you think there is a different      5 publication called "The Pneumokonioses," with a      6 "k"?      7       A. It's the same publication. This      8 could be a typo, or I could be remembering it      9 wrong, it's been a long time.      10      Q. I take it that that publication      11 does not specifically relate to the legislation      12 or whatever efforts were made in advance of the      13 legislation to submit it to the Illinois      14 legislature; is that right?      15      A. It's not clear. I think it --      16 because it is such a singular type of      17 publication and the time when it came out is so      18 perfect, really, if it was connected with this      19 legislation, that would be just perfect as far      20 as timing. And --      21      Q. Let me ask it this way --      22      A. And it looks like something that      23 would have been commissioned by insurance and      24 industrial interests. That's just my      25 impression, but it's not something that I can</p>

<p style="text-align: right;">Page 17</p> <p>1                   <b>Castleman, ScD</b>    2 support with any kind of historical    3 documentation or accounting of how this    4 three-volume thing came to be commissioned and    5 written.</p> <p>6     Q. Okay. So it's fair to say, as you    7 sit here now, you don't know whether or not    8 there were, as you say, insurance or industrial    9 interests urging the publication of this volume?</p> <p>10    A. <b>Right.</b></p> <p>11    Q. Any other publications or documents    12 that you have seen that you believe are related    13 in any way to the legislation in Illinois in the    14 1930s that we've been discussing?</p> <p>15    A. <b>Nothing else comes to mind.</b></p> <p>16    Q. Any other materials or documents    17 that you're aware of but which you have not seen    18 that would relate to the legislation in Illinois    19 in the 1930s relating to occupational disease    20 that we've been discussing?</p> <p>21    A. <b>Only what Mr. Walker told me about    22 this morning.</b></p> <p>23    Q. And are there any other documents    24 or publications that Mr. Walker told you about    25 that we haven't talked about yet today?</p>	<p style="text-align: right;">Page 19</p> <p>1                   <b>Castleman, ScD</b>    2 leading figure as an attorney trying to minimize    3 the financial impact of occupational disease    4 claims on American industry in the 1930s.</p> <p>5     Q. And I mean to ask you a very    6 specific question, Doctor, what is your    7 understanding as to A.C. Hirth's involvement    8 with the Illinois Manufacturers' Association?</p> <p>9     A. <b>I don't know anything about it. I    10 just understand from Mr. Walker that he was    11 involved in some way, maybe like with Mr. Brown    12 being listed on some committee. But having not    13 seen the documentation, I can't really tell you    14 any more.</b></p> <p>15    Q. You said that you believe that    16 Mr. Hirth was interested in minimizing the    17 financial impact of dust disease on industry?    18 Did I understand that correctly?</p> <p>19    A. <b>Right.</b></p> <p>20    Q. I take it -- well, let me ask you    21 this: Are you aware of any writings of    22 Mr. Hirth in which he says that that is his    23 interest?</p> <p>24    A. <b>Well, some presentations he did at    25 different groups. Let me see, what had I seen?</b></p>
<p style="text-align: right;">Page 18</p> <p>1                   <b>Castleman, ScD</b>    2     A. <b>No. It was a brief conversation.    3 I got the impression he's doing some rummaging    4 through historical papers relating to the    5 legislation and what was going on in the 1930s    6 with this Illinois Manufacturer --    7 Manufacturers' Association, and I look forward    8 to seeing them.</b></p> <p>9     Q. You mentioned that Mr. Walker had    10 also told you that Owens-Illinois was somehow    11 involved with the Illinois Manufacturers'    12 Association, right?</p> <p>13    A. <b>That's what he told me.</b></p> <p>14    Q. What is your understanding of    15 Owens-Illinois' involvement?</p> <p>16    A. <b>I think he mentioned A.C. Hirth,    17 H-I-R-T-H, as being involved. Hirth was a --    18 what do you call him, outhouse counsel? He was    19 an outside attorney employed by Owens-Illinois    20 and was prominent in the formation of the    21 industrial hygiene foundation and represented    22 Owens-Illinois on the Board of Industrial    23 Hygiene Foundation for many years. And I    24 believe he -- or at least I understand that he    25 was involved, that would also figure he was a</b></p>	<p style="text-align: right;">Page 20</p> <p>1                   <b>Castleman, ScD</b>    2 I haven't actually seen what he said at the    3 formation meeting of the Industrial Hygiene    4 Foundation, but it is alluded to in the notes of    5 Vandiver Brown, the meeting on January 15, 1935    6 in Pittsburgh.</p> <p>7     Q. I'm sorry, January what?</p> <p>8     A. <b>I may have seen other speeches by    9 A.C. Hirth, but I can't recall. It seems like    10 I've seen one somewhere, but I can't tell you    11 what it was or what it said.</b></p> <p>12    Q. Give me that date again, the Brown    13 notes of the meeting of January --</p> <p>14    A. <b>January 15, 1935, which really    15 started the whole process of forming the    16 Industrial Hygiene Foundation. I write about    17 that in Chapter 3.</b></p> <p>18    Q. As you sit here now, other than    19 Vandiver Brown's notes, have you seen anything    20 that would indicate or that would include    21 writings or comments of Mr. Hirth?</p> <p>22    A. <b>Nothing else comes to mind.</b></p> <p>23    Q. What -- if you know, did the    24 Illinois Manufacturers' Association urge the    25 passage of legislation in Illinois in the 1930s,</p>

Page 21	Page 23
<p>1                   Castleman, ScD      2 or were they opposed to the passage of      3 legislation?      4     <b>A. I don't know exactly what their</b>      5 <b>position was. I -- my impression is that they</b>      6 <b>realized that there would have -- there would be</b>      7 <b>some kind of legislation and wanted to assure</b>      8 <b>that legislation was least damaging to their</b>      9 <b>business activities.</b></p> <p>10    Q. And what do you base that on? Let      11 me break that up into pieces, I'm sorry.      12    What do you base your opinion on      13 that they knew that there would, in fact, be      14 legislation passed?</p> <p>15    <b>A. Well, of course nobody knows these</b>      16 <b>things are for sure going to happen until they</b>      17 <b>happen, but it's -- I get the impression that</b>      18 <b>there was a certain consternation that there</b>      19 <b>were these people who were dying with asbestosis</b>      20 <b>and silicosis and so they, for technical, legal</b>      21 <b>reasons were closed out both from filing</b>      22 <b>workers' compensation claims and from suing</b>      23 <b>their employer.</b></p> <p>24    <b>And this was something that put the</b>      25 <b>ball in the court of the state legislature to</b></p>	<p>1                   Castleman, ScD      2 any part of the three-volume set that you      3 believe covers these issues?      4     <b>A. No.</b>      5     <b>Q. And I think --</b>      6        MR. WALKER: If I can      7 interrupt, Mr. Fischer.      8        MR. FISCHER: Mm-hm.      9        MR. WALKER: Before or during      10 Dr. Castleman's direct examination,      11 I will be providing him with a copy      12 of Plaintiffs' Exhibit No. 603, the      13 1935 speech by Hirth, which he      14 entitled "The Problem" given at the      15 founding of IHF.      16       Two of the more delightful      17 praises: He says, "a concerted and      18 well-directed action" on page 1, and      19 on page 10 says that each company is      20 its brother's keeper.      21       I'm assuming that I have      22 provided that to your firm on other      23 occasions, but I'll certainly try to      24 give that to you yet this week.      25       <b>MR. FISCHER:</b> Without waiving</p>
Page 22	Page 24
<p>1                   Castleman, ScD      2 resolve. And I gather that there was enough      3 public pressure from unions and media interests      4 and so on that something was, in fact, done      5 about it.      6     Q. And what I'm asking is, from where      7 do you get that impression?      8     <b>A. From reading all the things that</b>      9 <b>I've seen about it. I mean, little bits and</b>      10 <b>pieces in a three-volume set that made reference</b>      11 <b>to the Illinois law, Johns Manville documents</b>      12 <b>that made reference to it; I think I must have</b>      13 <b>seen some of them, although I can't off the top</b>      14 <b>of my head recall specific documents.</b></p> <p>15    Q. Have you read the entire      16 three-volume set?      17    <b>A. I've looked through it for</b>      18 <b>everything it had on asbestosis. I don't think</b>      19 <b>I can say I've looked at every page, and I</b>      20 <b>probably missed abstracts -- missed reading</b>      21 <b>abstracts that might provide additional</b>      22 <b>information on some of the questions you're</b>      23 <b>asking about, what was going on in Illinois in</b>      24 <b>the '30s.</b></p> <p>25    Q. Can you point me specifically to</p>	<p>1                   Castleman, ScD      2 any objections with regard to      3 whether or not that would be      4 appropriate at this stage of the      5 litigation, let me say that I am      6 aware of the document that you're      7 referring to, Mr. Walker, and it's      8 not necessary for you to send me a      9 copy.      10      <b>MR. WALKER:</b> Okay. Thank      11 you.      12 <b>BY MR. FISCHER:</b>      13     Q. Dr. Castleman, you heard Mr. Walker      14 refer to what he described as a speech by      15 Mr. Hirth that he's marked as Exhibit No. 603.      16       Is that something that, from      17 Mr. Walker's description, you recognize as      18 something you've seen before?      19      <b>A. I think I may have seen that.</b>      20     Q. Are you prepared in any way to      21 discuss it today?      22      <b>A. No.</b>      23     Q. Do you know anything about what      24 Mr. Hirth is purported to have said in the      25 course of that speech?</p>

<p style="text-align: right;">Page 25</p> <p>1                   Castleman, ScD      2     <b>A. I don't recall what he said in that</b>      3     <b>particular speech, but I think I have seen that.</b>      4       Q. If you -- well, let me ask you      5     this: Do you recall when it was that you think      6     you saw it?      7     <b>A. No, I don't remember when I saw it.</b>      8       Q. Do you know how long ago it was      9     that you think you saw it?      10      <b>A. No.</b>      11     Q. Do you have any information as to      12   what position Mr. Hirth may have had with regard      13   to whether or not legislation in Illinois in the      14   1930s on the issue of occupational disease was a      15   good thing or a bad thing?      16     <b>A. I don't recall what he might have</b>      17     <b>said about that. Again, I think this was -- the</b>      18     <b>industry was in a reactive mode at this time,</b>      19     <b>and they were not initiating the legislation,</b>      20     <b>but they wanted to affect its development in a</b>      21     <b>way that it would be consistent with their</b>      22     <b>business interests.</b>      23       Q. Do you know whether there were      24   public hearings with regard to this proposed      25   legislation?</p>	<p style="text-align: right;">Page 27</p> <p>1                   Castleman, ScD      2     of filings were?      3     <b>A. The rates of filings --</b>      4       Q. Yes, sir.      5     <b>A. -- of claims?</b>      6       <b>No, I haven't.</b>      7       Q. When did silicosis become      8     compensable as an occupational disease in      9     Illinois?      10      MR. WALKER: Do you mean as      11   opposed to those plaintiffs that had      12   been successful under what we call      13   common lawsuits?      14      MR. FISCHER: I may be able      15   to rephrase it.      16      MR. WALKER: I object to the      17   question, unless you talk about what      18   I might call a matrix approach of --      19   under the Industrial Commission or      20   the trial by jury under common law      21   theories.      22       Q. Let me ask it that way,      23     Dr. Castleman: Are you aware of the rate of      24   filings of claims with the Industrial Commission      25   of people who asserted that they had contracted</p>
<p style="text-align: right;">Page 26</p> <p>1                   Castleman, ScD      2     <b>A. If there were, I haven't seen any</b>      3     <b>transcripts of legislative hearings or other</b>      4     <b>types of public hearings that may have occurred.</b>      5       Q. Do you know if there were any      6   groups or organizations that urged passage of      7   the legislation?      8     <b>A. If there were any mentioned in the</b>      9     <b>things that I've read, I don't recall who they</b>      10   <b>might have been. I can easily imagine unions,</b>      11   <b>for example, wanting to see something done by</b>      12   <b>the legislators, but I don't really remember</b>      13   <b>specific documents that talk about the parties</b>      14   <b>that were speaking publicly in favor of the</b>      15   <b>legislation or of some kind of legislation.</b>      16       Q. And just so we're clear, you can      17   imagine that unions might be in favor of this      18   kind of legislation, but you don't have any      19   information specifically about the legislation      20   in Illinois and whether there were any unions      21   that urged passage or not passage?      22      <b>A. That's right.</b>      23       Q. Have you looked to see, Doctor,      24   whether or not after asbestosis became a      25   compensable disease in Illinois, what the rate</p>	<p style="text-align: right;">Page 28</p> <p>1                   Castleman, ScD      2     asbestosis through their work after asbestosis      3     became compensable under that system?      4     <b>A. I had seen something and recorded</b>      5     <b>something about the filing of claims in the</b>      6     <b>state of Illinois. Let me see if I can find it</b>      7     <b>here.</b>      8       (Perusing book.) Somewhere I had      9     seen, and I thought recorded, that there were a      10   number of claims against Johns Manville in the      11   1930s in Illinois before there were changes made      12   in the law.      13       Q. And so that I understand, you're      14   talking about before the passage of this      15   legislation that we're talking about?      16      <b>A. Right.</b>      17       Q. How about after the passage of the      18   legislation, are you aware of anything about the      19   number of claims or -- in that sentence, I'm      20   using "claims" to include claims with the      21   Industrial Commission or claims in the common      22   law system, any kind of claim where somebody      23   sought compensation for the disease asbestosis?      24      <b>A. No, I don't know what happened in</b>      25     <b>terms of claims that were made. I mean, I might</b></p>

<p style="text-align: right;">Page 29</p> <p>1                   <b>Castleman, ScD</b></p> <p>2 know one or two scattered claims. Like, I knew 3 of a claim that was filed in the late '40s just 4 because I saw some reference to that in the 5 Johns Manville archives, Dominick Bertogliat, 6 B-E-R-T-O-G-L-I-A-T. He was a foreman at the 7 Waukegan plant, I think.</p> <p>8                   But I haven't come across 9 information that really, you know, gives any 10 sense of how many claims there were against 11 Johns Manville in Illinois in the years 12 following the enactment of the changes in the 13 law in 1936.</p> <p>14                  Q. Do you know anything about what 15 position Vandiver Brown was taking on the 16 question of whether or not there should be 17 legislation in Illinois that would recognize 18 asbestos as a compensable disease?</p> <p>19                  A. I don't know specifically what 20 Vandiver Brown's position was.</p> <p>21                  My impression is that the general 22 position of industry at the time was that when 23 laws were changed in a way that explicitly 24 recognized asbestosis and silicosis as 25 compensable diseases, that these laws be phased</p>	<p style="text-align: right;">Page 31</p> <p>1                   Castleman, ScD</p> <p>2 the 1930s that steps should be taken to prevent 3 asbestosis and silicosis from becoming 4 compensable diseases in the state of New Jersey 5 under that state's version of the Occupational 6 Disease Act and the Workers' Compensation Act?</p> <p>7                  A. That appears to have been his view 8 in 1934 and possibly by -- possibly in the 9 situation that the industry faced in Illinois, 10 some adjustment had to be made in a situation 11 where they weren't able to kill the legislation, 12 and then they had to come to terms with seeing 13 that the legislation written was something that 14 they felt was as good a deal as they could get.</p> <p>15                  Q. And would it be fair to say, 16 Dr. Castleman, that everything that you said in 17 that last answer after the word "possibly" is 18 something that you are essentially speculating 19 about without being able to point me to any 20 particular document or statement that would 21 support that claim?</p> <p>22                  A. Well, this is where speculation in 23 a legal context has a special meaning, and I 24 tend to try to avoid that.</p> <p>25                  It's my impression, from all of the</p>
<p style="text-align: right;">Page 30</p> <p>1                   <b>Castleman, ScD</b></p> <p>2 in in a way that left the employers free from 3 liability in the year -- for exposure in the 4 years prior to the enactment of the law so that 5 they could avoid having a deluge of claims filed 6 as soon as the law was passed and having to 7 compensate all of those people who have become 8 crippled from working for them, from breathing 9 occupational dusts.</p> <p>10                 Q. When did silicosis become 11 compensable in the state of Illinois as an 12 occupational disease, if you know?</p> <p>13                 MR. WALKER: You mean 14                 Industrial Commission-type 15                 compensable?</p> <p>16                 MR. FISCHER: Yes, I do.</p> <p>17                 MR. WALKER: Thank you.</p> <p>18                 A. Yeah. I think that was in 1936 19 with the changes in the law listing both 20 silicosis and asbestosis in the text of the law. 21 As far as I know, there wasn't any different 22 arrangement for silicosis than there was for 23 asbestos.</p> <p>24                 BY MR. FISCHER:</p> <p>25                 Q. Was it Vandiver Brown's position in</p>	<p style="text-align: right;">Page 32</p> <p>1                   Castleman, ScD</p> <p>2 things that I have read that have any bearing on 3 the subject, that this is what went on. But 4 whether you or a Court would characterize that 5 as speculation, I leave to you and the Court. I 6 wouldn't characterize it in that word.</p> <p>7                  Q. Would it be fair to say that you 8 could not point me to any specific document or 9 other material that would support your 10 impression in the sense of it actually says what 11 your impression is?</p> <p>12                 A. I can't tell you any more than I 13 have in terms of documentary basis for my views.</p> <p>14                 Q. Have we exhausted your knowledge 15 with regard specifically to this legislation in 16 Illinois in the 1930s and the involvement of the 17 Illinois Manufacturers' Association, if any?</p> <p>18                 A. Yes.</p> <p>19                 Q. Anything else that Mr. Walker has 20 brought to your attention as something that 21 might be relevant to your work in this case?</p> <p>22                 A. I don't think so. I think we've 23 spent about as much time talking about it as 24 Mr. Walker and I spent talking about it.</p> <p>25                 Q. Is it still true that you have</p>

Page 33	Page 35
<p>1                   Castleman, ScD      2 never read the trial testimony of      3 Richard Grimmie from 1996?      4     <b>A. That's right. I guess I've just</b>      5     <b>been too busy.</b>      6     Q. Fair to say, then, that you have      7 not relied upon the testimony of Mr. Grimmie in      8 forming any of the opinions that you would offer      9 to the jury in this matter?</p> <p>10    MR. WALKER: Well, what      11    opinions are those? I mean, every      12    defendant moves to limit the      13    opinions that he expresses.      14    So, I mean, I object to the      15    question. It seems kind of odd that      16    you would move in advance to say      17    that Dr. Castleman can't offer      18    opinion about Acts and then go to      19    the deposition and imply that      20    Mrs. Shipley and her lawyer are      21    going to violate the rulings.      22    Q. Just so we're clear, Dr. Castleman,      23    I actually move that you not be able to testify      24    at all, but I didn't move to limit your      25    testimony about any particular opinion.</p>	<p>1                   <b>Castleman, ScD</b>      2     <b>being done at the rate of about 60 a year, so</b>      3     <b>it's a little hard to remember what goes on at</b>      4     <b>each one.</b>      5     Q. Would it be fair to say that other      6     than the times when I have showed you      7     Mr. Grimmie's testimony no one else -- strike      8     that.      9     Has anybody other than me ever      10    shown you Mr. Grimmie's testimony?      11    <b>A. No. Apparently you're the only one</b>      12    <b>who thinks it has any value.</b>      13    Q. Is it still true that you have not      14    read the testimony of any Owens-Illinois      15    employee?      16    <b>A. Oh, I think I read the testimony of</b>      17    <b>the industrial hygienist, Mr. Willis Hazard. I</b>      18    <b>read some of his testimony, I believe.</b>      19    Q. Have you read -- well, let me ask      20    you this: Do you recall what deposition of      21    Mr. Hazard's you read?      22    <b>A. No.</b>      23    Q. Did you read the whole thing?      24    <b>A. I don't know. If I did, it was a</b>      25    <b>long time ago.</b></p>
Page 34	Page 36
<p>1                   Castleman, ScD      2     MR. WALKER: But I would      3     assume that you -- if you're      4     complaining, you certainly      5     complained less as at the time that      6     your brothers and sisters put this      7     harpoon in you than you seem to be      8     now.      9     Q. Doctor, what I'm really trying to      10    get at is, if you haven't read Mr. Grimmie's      11    testimony, I take it you don't rely on it?      12    <b>A. That's right. I mean, I</b>      13    <b>understand, and I may have seen excerpts of his</b>      14    <b>testimony, that he's a former Owens-Illinois</b>      15    <b>management official who came to work as a worker</b>      16    <b>and who now, many years later, claims to recall</b>      17    <b>being told something about the dangers of</b>      18    <b>asbestos at the time he was hired by</b>      19    <b>Owens-Illinois.</b>      20    Q. And you have that understanding      21    because at prior depositions you and I have      22    actually gone through some of Mr. Grimmie's      23    testimony together, right?      24    <b>A. Quite possibly. Like I say, I</b>      25    <b>mean, these depositions are -- well, they're</b></p>	<p>1                   <b>Castleman, ScD</b>      2     Q. How long ago?      3     <b>A. Well, I think the depositions are</b>      4     <b>dated in the early '80s or before, it could have</b>      5     <b>been.</b>      6     Q. Are you familiar with the testimony      7     of Mr. Hazard from February 11, 1981?      8     <b>A. That sounds like one of them, yes.</b>      9     Q. Have you ever testified that you      10    did not read the testimony of Mr. Hazard?      11    <b>A. I may have. Like I say, I think</b>      12    <b>I've probably seen excerpts of it. And my</b>      13    <b>memory of what I saw may not be totally</b>      14    <b>consistent in all the times I've been asked</b>      15    <b>about it. It's not something that I've written</b>      16    <b>about, it's not something that I paid particular</b>      17    <b>attention to.</b>      18    Q. It's not discussed in your book,      19    right; that is, Mr. Hazard's testimony is not      20    discussed in your book?      21    <b>A. I don't think so. I think that's</b>      22    <b>correct.</b>      23    Q. And Mr. Grimmie's testimony is not      24    discussed in your book, right?      25    <b>A. That's right.</b></p>

Page 37	Page 39
<p>1                   <b>Castleman, ScD</b></p> <p>2     Q. I've given you a complete copy of</p> <p>3     Mr. Grimmie's testimony in the past, right?</p> <p>4     <b>A. I believe you have.</b></p> <p>5     Q. And I've given you a complete copy</p> <p>6     of Mr. Hazard's testimony in the past, correct?</p> <p>7     <b>A. I didn't know where that came from,</b></p> <p>8     <b>but I do have it in my Owens-Illinois file.</b></p> <p>9     <b>Whether I first got it from you or not, I don't</b></p> <p>10    <b>remember.</b></p> <p>11    Q. I brought copies of each of them</p> <p>12    for you today. I will just set them here on the</p> <p>13    table. You're welcome to take them if you care</p> <p>14    to.</p> <p>15    <b>A. I already have them, I'm pretty</b></p> <p>16    <b>sure, in my Owens-Illinois file.</b></p> <p>17    Q. Okay. Well, if you think you've</p> <p>18    got them, then there's no need for you to take</p> <p>19    those. But if you think they're helpful to you,</p> <p>20    I brought them for you.</p> <p>21    Could you just acknowledge for me,</p> <p>22    Dr. Castleman, that we've got Owens-Illinois</p> <p>23    Exhibit No. 666, which is dated</p> <p>24    November 26, 1996, and it appears to be the</p> <p>25    testimony of Richard E. Grimmie?</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2     record to be clear that the</p> <p>3     transcript in which you referred as</p> <p>4     OI Exhibit No. 650 references quite</p> <p>5     a few exhibits on the page that</p> <p>6     follows Arabic page 3. And the copy</p> <p>7     that you've provided Dr. Castleman</p> <p>8     has none of them attached to it.</p> <p>9     <b>MR. FISCHER:</b> I agree.</p> <p>10    <b>MR. WALKER:</b> Okay.</p> <p>11    <b>MR. FISCHER:</b> I'll also state</p> <p>12    that the copy of the transcript of</p> <p>13    Mr. Grimmie that I've provided here</p> <p>14    makes reference to exhibits that</p> <p>15    were available to Mr. Grimmie and</p> <p>16    the people there, and that they are</p> <p>17    not attached to this transcript</p> <p>18    either.</p> <p>19    <b>BY MR. FISCHER:</b></p> <p>20    Q. Dr. Castleman, as I said, I believe</p> <p>21    you testified that you have those exhibits, but</p> <p>22    I'm happy to send them to you if you'd like.</p> <p>23    Would you like me to?</p> <p>24    <b>A. I don't see a list of what the</b></p> <p>25    <b>exhibits are. I guess I -- you have to go</b></p>
Page 38	Page 40
<p>1                   <b>Castleman, ScD</b></p> <p>2     <b>A. Yes.</b></p> <p>3     Q. And Owens-Illinois No. 650, dated</p> <p>4     February 11, 1981, is the testimony of</p> <p>5     Willis Hazard?</p> <p>6     <b>A. Right.</b></p> <p>7     MR. WALKER: Let me just</p> <p>8     comment that the only trans- -- the</p> <p>9     transcripts I've seen of Hazard on</p> <p>10    February 11th, '81 -- let me just</p> <p>11    check -- I thought that had a lot of</p> <p>12    exhibits associated with it, and I</p> <p>13    don't see any exhibits here,</p> <p>14    Mr. Fischer.</p> <p>15    What part of my recollection</p> <p>16    is wrong?</p> <p>17    MR. FISCHER: There are no</p> <p>18    exhibits attached there.</p> <p>19    Q. Dr. Castleman, would you like to</p> <p>20    have the exhibits? I think you testified in the</p> <p>21    past that you have them, but if you would like</p> <p>22    copies of them, I'm happy to send them to you.</p> <p>23    MR. WALKER: Well, I'm not</p> <p>24    saying that you should or shouldn't</p> <p>25    give them to him, I just want the</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2     <b>through the transcript to see that, at least</b></p> <p>3     <b>that's the way it looks. All I have is an index</b></p> <p>4     <b>that lists what pages the exhibits are mentioned</b></p> <p>5     <b>on, at least that's my reading of this thing.</b></p> <p>6     <b>I don't think it would probably be</b></p> <p>7     <b>useful for me to take the time to try and figure</b></p> <p>8     <b>this out. I don't actually see the reference to</b></p> <p>9     <b>the first 19 exhibits on page 4, even though as</b></p> <p>10    <b>I see it as Exhibit Nos. 1 to 19, and then</b></p> <p>11    <b>there's reference to page 4.</b></p> <p>12    Q. You've testified in the past,</p> <p>13    Dr. Castleman, about the number of references in</p> <p>14    the literature to asbestos-related disease as of</p> <p>15    certain points in time, right?</p> <p>16    <b>A. I have.</b></p> <p>17    Q. And I was curious about when you</p> <p>18    first made that count.</p> <p>19    <b>A. Well, I don't remember. I mean,</b></p> <p>20    <b>I've been testifying in these cases since I was</b></p> <p>21    <b>32 years old, and I'm an old man now. I don't</b></p> <p>22    <b>remember when I was first asked to give numbers.</b></p> <p>23    <b>Lots of times I prefer to do it by</b></p> <p>24    <b>referencing something like the report published</b></p> <p>25    <b>by the State of Pennsylvania in 1935 in which</b></p>

Page 41	Page 43
<p>1                   <b>Castleman, ScD</b></p> <p>2   <b>there are 125 references to earlier works on</b></p> <p>3   <b>asbestosis, published all over the world.</b></p> <p>4   <b>It's something I'm more comfortable</b></p> <p>5   <b>with than trying to pick numbers and answering</b></p> <p>6   <b>the different questions that lawyers who ask me</b></p> <p>7   <b>about, you know, how many articles on asbestosis</b></p> <p>8   <b>were published in the world literature by 1953</b></p> <p>9   <b>or whatever.</b></p> <p>10   <b>You know, I feel I'm less than</b></p> <p>11   <b>precise in my answers about questions like that</b></p> <p>12   <b>because I really don't know exactly how many</b></p> <p>13   <b>articles I had seen by a given date.</b></p> <p>14   Q. Did you ever make a list that would</p> <p>15   show how many articles that appeared before any</p> <p>16   given date?</p> <p>17   A. <b>No. I think David Ozonoff did</b></p> <p>18   <b>something like that, and I saw a list that he</b></p> <p>19   <b>had compiled, but I never did that myself.</b></p> <p>20   Q. Is the Ozonoff list cited in your</p> <p>21   book?</p> <p>22   A. <b>No.</b></p> <p>23   Q. Is that something you still have in</p> <p>24   your possession?</p> <p>25   A. <b>I don't think so.</b></p>	<p>1                   <b>Castleman, ScD</b></p> <p>2   objection. Go ahead.</p> <p>3   MR. FISCHER: Thank you.</p> <p>4   BY MR. FISCHER:</p> <p>5   Q. The Dreessen publication in '39 in</p> <p>6   addition to the publication in '38, that the '39</p> <p>7   publication essentially discusses the same work</p> <p>8   that he did in the textile mills, correct?</p> <p>9   A. <b>That's a very short summary that he</b></p> <p>10   <b>coauthored with Dr. Sayers, yes.</b></p> <p>11   Q. Yes. And I'm trying to get a sense</p> <p>12   for when you've done your count, does the '39</p> <p>13   one count as an additional publication?</p> <p>14   A. <b>I would think of it that way, yes.</b></p> <p>15   Q. How about the Cartier case series</p> <p>16   in 1952?</p> <p>17   A. <b>Anything that was published that</b></p> <p>18   <b>talked about asbestos and disease, I would count</b></p> <p>19   <b>as part of the published literature.</b></p> <p>20   Q. So that would include Cartier from</p> <p>21   '52, right?</p> <p>22   A. <b>Sure.</b></p> <p>23   Q. Would it include the publication of</p> <p>24   the Owens-Illinois Kaylo studies in 1955?</p> <p>25   A. <b>Sure.</b></p>
Page 42	Page 44
<p>1                   <b>Castleman, ScD</b></p> <p>2   Q. When you talk about the documents</p> <p>3   that made reference to asbestos-related disease</p> <p>4   at certain points in time, I take it that</p> <p>5   Merewether's publications would be included,</p> <p>6   right?</p> <p>7   A. <b>Sure.</b></p> <p>8   Q. Including the textbook that he</p> <p>9   edited in 1956?</p> <p>10   A. <b>That's one of Merewether's</b></p> <p>11   <b>publications, yes.</b></p> <p>12   Q. The Dreessen article from '38?</p> <p>13   A. <b>Yes, that's certainly part of the</b></p> <p>14   <b>literature.</b></p> <p>15   Q. There's a Dreessen publication --</p> <p>16   MR. WALKER: I assume this is</p> <p>17   not a trick question, you're not</p> <p>18   going to say "And didn't you say</p> <p>19   that Merewether's article that was</p> <p>20   actually published in '38 was part</p> <p>21   of the literature in '36"? I mean</p> <p>22   that's not your purpose?</p> <p>23   MR. FISCHER: That's not.</p> <p>24   No, it's not.</p> <p>25   MR. WALKER: Okay. I have no</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2   Q. Would it include other publications</p> <p>3   of Dr. Schepers?</p> <p>4   A. <b>If it talked about asbestos, it</b></p> <p>5   <b>would.</b></p> <p>6   Q. And it would include Doll in '55;</p> <p>7   is that right?</p> <p>8   A. <b>Right.</b></p> <p>9   Q. Would it include editions of JAMA</p> <p>10   at various points in time to the extent that</p> <p>11   they discussed asbestos?</p> <p>12   A. <b>Yes. I mean, it would include</b></p> <p>13   <b>anything in the medical literature or anyplace</b></p> <p>14   <b>else that was published and publicly available</b></p> <p>15   <b>as a published writing that talked about</b></p> <p>16   <b>asbestos as a hazard.</b></p> <p>17   Q. If a publication appeared in a</p> <p>18   journal and then it was abstracted in the IHF</p> <p>19   Digest, would that count as one publication or</p> <p>20   two?</p> <p>21   A. <b>I don't know. I mean, it just</b></p> <p>22   <b>depends how you do your counting. You could</b></p> <p>23   <b>say, you know, abstracts are counted as separate</b></p> <p>24   <b>publications because they are, in a sense,</b></p> <p>25   <b>separately available in ways that the original</b></p>

<p style="text-align: right;">Page 45</p> <p>1                   <b>Castleman, ScD</b>  2 articles might not be. It just depends. It  3 just depends on the question.  4                   And I have said on occasion that  5 there were at least 80 articles and abstracts  6 published that talked about asbestos and cancer  7 before 1950, but there I'm clear in the way I  8 expressed it that I am counting abstracts.  9                   Q. And to the extent -- what I'm  10 really trying to do, Doctor, of course, is  11 figure out how you do it.  12                  If someone asked you how many  13 publications were there, would the abstract  14 count as a separate publication to you, or would  15 it depend on the context, or how would you do  16 it?  17                  <b>A. I normally --</b>  18                  MR. WALKER: Didn't he just  19 answer it depends on the context? I  20 mean --  21                  <b>A. Yes, it depends on the context. I</b>  22 <b>normally don't think of abstracts as separate</b>  23 <b>publications, but in terms of notice and</b>  24 <b>availability of information in cases of this</b>  25 <b>kind, abstracts can be very important.</b></p>	<p style="text-align: right;">Page 47</p> <p>1                   <b>Castleman, ScD</b>  2                  Q. And it was interested in a wide  3 variety of occupational diseases, not just those  4 related to asbestos, correct?  5                  <b>A. Yes.</b>  6                  Q. Much of the workings of the IHF had  7 nothing to do with asbestos?  8                  <b>A. Right.</b>  9                  Q. There were certainly members of the  10 IHF that had no connection to industrial use of  11 asbestos?  12                  <b>A. I suppose so, although asbestos</b>  13 <b>insulation was very widely used in the factories</b>  14 <b>of diverse members of the IHF.</b>  15                  Q. It would be inaccurate to describe  16 the IHF as an asbestos institution, correct?  17                  <b>A. Yes. I wouldn't think of it that</b>  18 <b>way. It was more broadly based.</b>  19                  Q. The IHF Digest published abstracts  20 of medical and industrial literature that might  21 relate to workplace conditions, right?  22                  <b>A. And hazards, yes.</b>  23                  Q. "And hazards."  24                  Including industrial disease?  25                  <b>A. Right.</b></p>
<p style="text-align: right;">Page 46</p> <p>1                   <b>Castleman, ScD</b>  2                  It may well be that defendant  3 companies that were members of the IHF didn't  4 receive certain medical journals, and yet they  5 received the Industrial Hygiene Digest, they did  6 receive reports about what articles on asbestos  7 said in various medical journals around the  8 world.  9                  Q. Let me ask you a little bit about  10 the IHF.  11                  The meetings of the IHF were  12 contemporaneously publicized, correct?  13                  <b>A. Well, some of them were. They had</b>  14 <b>a -- kind of a general or plenary meeting that</b>  15 <b>received some publicity in newspapers in the</b>  16 <b>late '40s, so I understand, according to</b>  17 <b>writings of the IHF.</b>  18                  But then there were other kinds of,  19 you know, different committees and groups within  20 the IHF whose discussions, I think, were more  21 closely held and which were not the subject of  22 any publications.  23                  Q. The IHF was interested in  24 occupational disease, right?  25                  <b>A. Right.</b></p>	<p style="text-align: right;">Page 48</p> <p>1                   <b>Castleman, ScD</b>  2                  Q. And the IHF Digest was widely  3 distributed amongst IHF members, correct?  4                  <b>A. Sure. It was one of their reasons</b>  5 <b>they became members.</b>  6                  Q. Was to get the IHF Digest?  7                  <b>A. Right.</b>  8                  Q. It was a tool to disseminate  9 information?  10                 <b>A. Right.</b>  11                 Q. I'm sorry, I didn't catch your  12 answer.  13                 <b>A. "Right."</b>  14                 Q. Are you aware of any other  15 public -- any publication that disseminated more  16 information in the 1940s and '50s about  17 asbestos-related disease than the IHF Digest?  18                 <b>A. The only thing that came close</b>  19 <b>would have been the Journal of Industrial</b>  20 <b>Hygiene, a later Journal of Industrial Hygiene</b>  21 <b>and Toxicology, which operated until 1949 and</b>  22 <b>contained a great many abstracts, as well.</b>  23                 Q. Are you aware, Dr. Castleman, of  24 any report in the medical literature of a person  25 getting mesothelioma that was attributed to an</p>

Page 49	Page 51
<p>1                   Castleman, ScD      2 occupational exposure that the person's spouse      3 had experienced before the Newhouse &amp; Thompson      4 report in 1965?</p> <p>5     <b>A. With respect to other substances,      6 there were certainly cases.</b></p> <p>7         <b>With respect to asbestos, if that's      8 what you were meaning to ask about, the earliest      9 household contact case, I believe, was one of      10 the cases in Wagner's report -- W-A-G-N-E-R --      11 in 1960. It was the daughter of somebody who      12 had occupational exposure to asbestos.</b></p> <p>13    Q. And in the Wagner report in 1960,      14 is there a description there that the households      15 in which those people lived were either in or in      16 very close proximity to the asbestos mines?</p> <p>17    <b>A. Some of them were. I don't think      18 that that kind of comment can be stated in a      19 blanket way in describing the cases.</b></p> <p>20    Q. With regard to the specific      21 instance that you brought up of the daughter, is      22 it clear to you from reviewing Wagner that the      23 exposure to asbestos that that woman experienced      24 was asbestos that was brought home by her father      25 or asbestos that she would have had an exposure</p>	<p>1                   Castleman, ScD      2 have a problem.      3                   MR. FISCHER: Thank you.      4                   THE WITNESS: If you say so,      5 Mr. Modesitt, I believe you.      6                   MR. MODESITT: We'll be done.      7 BY MR. FISCHER:      8     Q. Dr. Castleman, when did cautionary      9 information about asbestos first appear on      10 asbestos-contained products?      11    <b>A. It's not clear to me whether there      12 was any health warning on products made by -- I      13 think the company was called Cafco.</b>      14    Q. United States Mineral?      15    <b>A. United States Mineral. Thank you.</b>      16         I make reference to it at the      17 beginning of Chapter 5. There were some      18 documents indicating that they had a sprayed      19 asbestos product that they were seriously      20 considering warning people about at the very end      21 of 1962, and I'm not sure exactly what happened      22 as to the warnings on such products.      23         The next thing would be the Johns      24 Manville label in April, I think, of 1964      25 where -- and this is documented in several ways,</p>
Page 50	Page 52
<p>1                   Castleman, ScD      2 to merely as a result of living near the mine?      3     <b>A. I don't recall any detail exactly      4 what Wagner said about the environmental      5 exposure and the household contact exposure.      6 There were 33 cases in his report, and they were      7 generally described fairly briefly individually.</b></p> <p>8     MR. WALKER: Mr. Fischer, in      9         case you're either reloading or      10      going to another subject or      11      something, I notice that we've been      12      going -- and I didn't record our      13      start time -- but for a while.      14         THE WITNESS: About an hour.      15     MR. WALKER: And I just want      16      to make sure that amongst the      17      defense, there's some agreement as      18      to how the time is going to be      19      shared so that we don't run into the      20      situation that some defendant is      21      going to say, well, I really would      22      have put that witness away but for      23      the fact that OI just took too look      24      to start --      25         MR. MODESITT: We will not</p>	<p>1                   Castleman, ScD      2 so I am satisfied that it actually happened --      3         Johns Manville put a very mild warning on their      4 containers of insulation.      5         Q. And when you say --      6         <b>A. A health warning basically saying      7 that inhalation of asbestos in excessive      8 quantities over long periods of time may be      9 harmful.</b>      10         <b>And then they even try to expand      11 the vocabularies of the workers by advising that      12 they use respirators approved for      13 pneumoconiosis-producing dust in its warning      14 label.</b>      15         Q. Do I understand you correctly,      16 Doctor, that you just don't know one way or the      17 other whether or not United States Mineral put a      18 warning or caution statement on its Cafco      19 products prior to 1964?      20         <b>A. That's right. I just -- the      21 document trail that I had sort of -- it's less      22 than conclusive in establishing that.</b>      23         Q. Next in the chronology, at least      24 with regard to cautions or warnings, would be      25 the Johns Manville statement in April of '64?</p>

Page 53	Page 55
<p>1                   Castleman, ScD</p> <p>2     <b>A. Right.</b></p> <p>3     Q. When you said that they put it on</p> <p>4     their insulation products, what do you mean by</p> <p>5     "insulation products" of Johns Manville?</p> <p>6     <b>A. The shipping cartons of</b></p> <p>7     <b>thermobestos. And if they were still making</b></p> <p>8     <b>magnesium insulation, I suppose that would have</b></p> <p>9     <b>been covered, too.</b></p> <p>10    Q. And did Johns Manville manufacture,</p> <p>11    of course, asbestos-containing products other</p> <p>12    than thermobestos and its magnesia products,</p> <p>13    right?</p> <p>14    <b>A. They manufactured lots of asbestos</b></p> <p>15    <b>products. They didn't put warnings on any of</b></p> <p>16    <b>those as far as I know, and they didn't put</b></p> <p>17    <b>warnings on the sacks of asbestos they were</b></p> <p>18    <b>shipping into this country from Canada, either,</b></p> <p>19    <b>not for another four or five years.</b></p> <p>20    Q. When did the warnings first appear</p> <p>21    on the asbestos fiber containers?</p> <p>22    <b>A. That appears to have happened</b></p> <p>23    <b>sometime in the beginning of 1969.</b></p> <p>24    Q. How about with regard to other</p> <p>25    products that had been fabricated using asbestos</p>	<p>1                   Castleman, ScD</p> <p>2     <b>A. Nothing comes to mind.</b></p> <p>3     Q. When did Owens Corning first place</p> <p>4     a warning or caution on its products that</p> <p>5     contained asbestos?</p> <p>6     <b>A. It appears to have happened --</b></p> <p>7     <b>well, I think that happened in 1970, but I'm not</b></p> <p>8     <b>sure.</b></p> <p>9     Q. How about Pittsburgh Corning, when</p> <p>10    did it first place a warning on its products, if</p> <p>11    ever?</p> <p>12    <b>A. I don't think they ever did.</b></p> <p>13    Q. How about Unarco?</p> <p>14    <b>A. I don't know.</b></p> <p>15    Q. Do you know if Unarco had any</p> <p>16    involvement in the Illinois Manufacturing --</p> <p>17    Manufacturers' Association?</p> <p>18    <b>A. I don't know if they did. This may</b></p> <p>19    <b>have been before Unarco was making asbestos</b></p> <p>20    <b>insulation in Bloomington.</b></p> <p>21    Q. Well, we were talking about the</p> <p>22    1930s specifically before, but let me ask you</p> <p>23    just generally speaking whether you know if</p> <p>24    Unarco had any participation in the Illinois</p> <p>25    Manufacturers' Association at any period of</p>
Page 54	Page 56
<p>1                   Castleman, ScD</p> <p>2     as a raw material; when, if ever, did Johns</p> <p>3     Manville put warnings on those products?</p> <p>4     <b>A. I don't remember specific dates on</b></p> <p>5     <b>things like asbestos cement sheets. I can't</b></p> <p>6     <b>think of anything else they made that might have</b></p> <p>7     <b>had warnings on it before 1972, when it was</b></p> <p>8     <b>required by the Department of Labor.</b></p> <p>9     Q. How about Transite Board?</p> <p>10    <b>A. That's what I'm thinking of,</b></p> <p>11    <b>asbestos cement sheets. I don't know -- I think</b></p> <p>12    <b>there was an article published by Keith Harless.</b></p> <p>13    <b>And he made reference to asbestos cement --</b></p> <p>14    <b>well, asbestos board products from Johns</b></p> <p>15    <b>Manville and noted that there -- if I remember</b></p> <p>16    <b>this right, he noted that there weren't warning</b></p> <p>17    <b>labels on the products. And I'm just trying to</b></p> <p>18    <b>see when that was published.</b></p> <p>19    <b>(Perusing book.) It might have</b></p> <p>20    <b>been in 1978.</b></p> <p>21    Q. Let me ask it this way,</p> <p>22    Dr. Castleman: Are you aware of any other</p> <p>23    products on which Johns Manville placed a</p> <p>24    warning prior to 1972 other than thermobestos or</p> <p>25    similar kinds of insulation and asbestos fiber?</p>	<p>1                   Castleman, ScD</p> <p>2     time.</p> <p>3     <b>A. Well, apparently they did have a</b></p> <p>4     <b>plant in Illinois in Cicero starting in 1926,</b></p> <p>5     <b>so -- and I have it recorded as a unibestos</b></p> <p>6     <b>plant, so I had forgotten about that. So</b></p> <p>7     <b>apparently they were a manufacturer in Illinois</b></p> <p>8     <b>in the period of interest to us at this</b></p> <p>9     <b>discussion, at this deposition.</b></p> <p>10    Q. Do you know whether or not Unarco</p> <p>11    was ever a member of the Illinois Manufacturers'</p> <p>12    Association?</p> <p>13    <b>A. No, I don't.</b></p> <p>14    Q. Do you know whether Unarco had any</p> <p>15    role or participation in the legislation that</p> <p>16    was offered and passed about occupational</p> <p>17    disease in Illinois in the 1930s?</p> <p>18    <b>A. I don't know about that.</b></p> <p>19    Q. Other than Johns Manville and Owens</p> <p>20    Corning, did any other manufacturer of</p> <p>21    asbestos-containing pipe insulation or block</p> <p>22    insulation place a warning or caution label on</p> <p>23    its product prior to 1972?</p> <p>24    <b>A. I believe that EaglePicher did in</b></p> <p>25    <b>1964. There are historic documents, letters to</b></p>

<p style="text-align: right;">Page 57</p> <p>1           <b>Castleman, ScD</b>  2   customers and the memorable "Don't shout caution  3   from the rooftops" internal memo that I recall  4   relating to that. That's one company.  5   Q. How about Philip Carey, are you  6   aware whether Philip Carey ever placed a warning  7   on its asbestos-containing pipe insulation or  8   blocks prior to '72?  9   <b>A. I don't know if they did.</b>  10   Q. In what countries were there  11   production of products using asbestos as a raw  12   material in the 1950s and '60s?  13   MR. WALKER: You mean like  14   nations?  15   MR. FISCHER: Yes, sir.  16   <b>A. Well, it was used in lots of  17   countries. What do you mean? You mean asbestos  18   mining or just use of asbestos?</b>  19   Q. No. I'm talking about the  20   fabrication of products using asbestos as a raw  21   material.  22   <b>A. It was very widespread. I think  23   most industrial countries and a lot of  24   developing countries had asbestos plants. I  25   mean, India had asbestos plants, at least as far</b></p>	<p style="text-align: right;">Page 59</p> <p>1           <b>Castleman, ScD</b>  2   <b>A. I think I recall seeing something  3   like that on a sack of asbestos from Russia at a  4   plant in Vietnam.</b>  5   Q. When would you have seen that?  6   <b>A. 1991.</b>  7   Q. Is that the --  8   <b>A. The warning was in English.</b>  9   Q. Is that the first time that you  10   would be aware of any warning or caution  11   relating to the health effects of asbestos on  12   asbestos or asbestos-containing products  13   originating in the Soviet Union?  14   <b>A. Yes. But I haven't made any real  15   investigation about that. This was just an  16   incidental observation.</b>  17   Q. How about asbestos-containing  18   products manufactured in Europe; are you aware  19   of any warnings or cautions, labels being placed  20   on asbestos-containing products manufactured in  21   Europe at any time?  22   <b>A. Yes. I discuss this in Chapter 11  23   of the book.</b>  24   (Perusing book.) I even have a  25   <b>picture of the label that was developed by the</b></p>
<p style="text-align: right;">Page 58</p> <p>1           <b>Castleman, ScD</b>  2   <b>back as 1937.</b>  3   Q. When did warnings or caution labels  4   first appear on any asbestos-containing product  5   manufactured in India?  6   <b>A. I don't know if they even do it  7   today. The rest of the world, as far as I've  8   been able to determine, lagged behind the  9   United States on the matter of warning labels on  10   asbestos products.</b>  11   I guess I should say the rest of  12   the world's companies and governments lagged  13   behind the labeling that initially started with  14   some asbestos manufacturers in the United States  15   and then became a matter of government  16   requirement.  17   Q. And, in fact, in many nations or  18   countries, asbestos manufacturing is and was  19   government-owned, right?  20   <b>A. Well, that was, I suppose, the case  21   in the old Soviet Union and China.</b>  22   Q. Did asbestos-containing products  23   manufactured in the Soviet Union or China ever  24   bear warnings or cautions relating to the health  25   effects of asbestos?</p>	<p style="text-align: right;">Page 60</p> <p>1           <b>Castleman, ScD</b>  2   <b>British Asbestos Industry (indicating).</b>  3   Q. The take care with asbestos  4   picture?  5   <b>A. Right. Right. So I thought this  6   was a marvelous creation from the land of  7   understatement and ambiguity.</b>  8   Q. And it looks like on the very next  9   page there appears to be a warning that is in  10   Spanish?  11   <b>A. Yes. This other warning, although  12   it's in Spanish, is much clearer in  13   communicating true dangers of asbestos. Even to  14   people who don't speak Spanish, the word cáncer  15   --</b>  16   Q. C-A-N-C-E-R?  17   <b>A. -- C-A-N-C-E-R -- is understandable  18   and so is the skull and crossbones.</b>  19   Q. And that's on page 789 of your  20   book; is that correct?  21   <b>A. Right.</b>  22   Q. And when did that first appear on  23   any product, that you're aware of?  24   <b>A. Which one?</b>  25   Q. The one on page 789 of the book.</p>

Page 61	Page 63
<p>1                   Castleman, ScD</p> <p>2     <b>A. Oh, I don't think that ever</b></p> <p>3     <b>appeared on a product. That was a protest</b></p> <p>4     <b>poster hung in schools made of asbestos cement</b></p> <p>5     <b>by Puerto Rican teachers.</b></p> <p>6     Q. Okay. The --</p> <p>7     <b>A. That would have been in the late</b></p> <p>8     <b>'70s, I think, '79, 1980.</b></p> <p>9     Q. How about the label on page 788,</p> <p>10    that did appear on products; is that correct?</p> <p>11    <b>A. I think so.</b></p> <p>12    Q. And when did it appear on products?</p> <p>13    <b>A. It was -- as the text below says,</b></p> <p>14    <b>it was introduced in Britain in 1976 and later</b></p> <p>15    <b>adopted by the Asbestos International</b></p> <p>16    <b>Association, and that they were satisfied that</b></p> <p>17    <b>this label had no adverse effect on sales in</b></p> <p>18    <b>Western Europe and Australasia.</b></p> <p>19    Q. Is that a T&amp;N document?</p> <p>20    <b>A. The reference?</b></p> <p>21    Q. Yes.</p> <p>22    <b>A. Let's see. Probably it is.</b></p> <p>23    (browsing book.) <b>I don't know. If</b></p> <p>24    <b>it's a document that came from Turner &amp; Newall,</b></p> <p>25    <b>it's not referenced in that way.</b></p>	<p>1                   Castleman, ScD</p> <p>2     ahead of Britain or Europe with regard to</p> <p>3     caution or warning labels, right?</p> <p>4     <b>A. Right. And some of the T&amp;N</b></p> <p>5     <b>documents talk about how the Americans were a</b></p> <p>6     <b>lot more nervous about this matter of warning</b></p> <p>7     <b>labels because of the product liability cases in</b></p> <p>8     <b>the United States, which the Europeans and the</b></p> <p>9     <b>Brits generally didn't have to worry about.</b></p> <p>10    Q. One of the things that you've done</p> <p>11    with your professional life is spent some time</p> <p>12    outside of the United States urging bans on</p> <p>13    asbestos use, right?</p> <p>14    <b>A. Well, working with other public</b></p> <p>15    <b>health workers in connection with legislation</b></p> <p>16    <b>like that, yes.</b></p> <p>17    Q. Would you agree that every country</p> <p>18    that has used asbestos industrially has had</p> <p>19    mesothelioma incidents?</p> <p>20    <b>A. Well, I think that's probably true,</b></p> <p>21    <b>although it's not documented in every case. And</b></p> <p>22    <b>there are lots of countries where their cases</b></p> <p>23    <b>just go uncounted, undiagnosed, unrecorded in</b></p> <p>24    <b>the medical journals.</b></p> <p>25    Q. Have you ever tried to determine</p>
Page 62	Page 64
<p>1                   Castleman, ScD</p> <p>2     <b>It's a 1984 letter from the</b></p> <p>3     <b>Asbestos International Association guy to the</b></p> <p>4     <b>Asbestos Institute fellow in Canada.</b></p> <p>5     Q. If we exclude Great Britain,</p> <p>6     Doctor, are you aware of any warnings or</p> <p>7     cautions that have ever appeared on</p> <p>8     asbestos-containing products manufactured in</p> <p>9     Europe except for Great Britain?</p> <p>10    <b>A. Nothing comes to mind. I may have</b></p> <p>11    <b>discussed other countries in Chapter 11, but I</b></p> <p>12    <b>can't remember anything. I mean, it seems like</b></p> <p>13    <b>the British industry took the lead in dealing</b></p> <p>14    <b>with this question of warning labels. That's</b></p> <p>15    <b>expressed very clearly in a meeting of the</b></p> <p>16    <b>Asbestos International Association in 1978, that</b></p> <p>17    <b>they felt that they'd rather have no warning</b></p> <p>18    <b>label at all, but if they had to put one on,</b></p> <p>19    <b>that they would like to go with this rather than</b></p> <p>20    <b>have to worry about the skull and crossbones or</b></p> <p>21    <b>the word "cancer" being imposed on them by</b></p> <p>22    <b>government authorities.</b></p> <p>23    Q. Now, when you say the British</p> <p>24    industry took the lead, you mean in Europe; we</p> <p>25    already established that the United States was</p>	<p>1                   Castleman, ScD</p> <p>2     whether mesothelioma incidents in the</p> <p>3     United States is more or less than in other</p> <p>4     countries that have used asbestos industrially?</p> <p>5     <b>A. I don't think that there would be</b></p> <p>6     <b>any way of making that kind of comparison. So</b></p> <p>7     <b>much depends on the recording of this data, and</b></p> <p>8     <b>different countries do it in different ways.</b></p> <p>9     <b>Lots of other countries have a national health</b></p> <p>10    <b>service that serves as a good way of gathering</b></p> <p>11    <b>information like this. We don't have anything</b></p> <p>12    <b>of the kind.</b></p> <p>13    Q. Dr. Selikoff published his studies</p> <p>14    of insulators beginning in 1964, correct?</p> <p>15    <b>A. Yes.</b></p> <p>16    Q. Do you know when Dr. Selikoff began</p> <p>17    his work that led to the publication in 1964?</p> <p>18    <b>A. No.</b></p> <p>19    Q. Do you know how that work was</p> <p>20    funded?</p> <p>21    <b>A. No. All I know is that the</b></p> <p>22    <b>Insulation Workers Union cooperated, but I don't</b></p> <p>23    <b>know if they were involved in funding their</b></p> <p>24    <b>work, or not initially.</b></p> <p>25    Q. What kind of cooperation did they</p>

Page 65	Page 67
<p>1                   Castleman, ScD      2 give?      3     <b>A. Well, I understand that they gave</b>      4 <b>him access to their death cards. And, of</b>      5 <b>course, they gave him access to their union</b>      6 <b>membership rules so that he was able to do the</b>      7 <b>mortality study he conducted by knowing who the</b>      8 <b>members of the union were as of the beginning of</b>      9 <b>1942, and then doing the follow-up on them to</b>      10 <b>track down the death certificates and do the</b>      11 <b>statistical analysis.</b></p> <p>12    Q. Dr. Selikoff's studies eventually      13 included physical examinations of the members of      14 the union, right, in New York and New Jersey?</p> <p>15    <b>A. Right. I mean, after the mortality</b>      16 <b>study, or sometime maybe even before it was</b>      17 <b>published, Selikoff had sufficiently open</b>      18 <b>relations with the union locals in New York and</b>      19 <b>New Jersey that he was able to start doing</b>      20 <b>examinations of the members of the union and</b>      21 <b>develop morbidity data on the prevalence of</b>      22 <b>asbestosis among the workers.</b></p> <p>23    Q. And one of Dr. Selikoff's many      24 contributions to medicine and science is that he      25 was successful publicizing much of the</p>	<p>1                   <b>Castleman, ScD</b>      2 <b>the use of the word "successful" and make sure</b>      3 <b>that it's clear that, although Selikoff was an</b>      4 <b>extraordinary individual and made very important</b>      5 <b>contributions, there were real limits to</b>      6 <b>anyone's ability in getting the word out to the</b>      7 <b>working people in this country about the lethal</b>      8 <b>dangers of asbestos when he started doing this</b>      9 <b>in the 1960s and into the '70s.</b></p> <p>10    Q. Among the groups that Dr. Selikoff      11 spoke to were the insulators themselves, right?</p> <p>12    <b>A. Yes.</b></p> <p>13    Q. He spoke at least one of their      14 annual conventions about the health risks posed      15 by exposure to asbestos?</p> <p>16    <b>A. Well, they had conventions of their</b>      17 <b>union officers it seems every five years, and he</b>      18 <b>spoke at several of these meetings about his</b>      19 <b>research.</b></p> <p>20    Q. Are you suggesting the meetings      21 were limited to union officers?</p> <p>22        MR. WALKER: Who did you --      23 say that again, Matt.</p> <p>24        MR. FISCHER: Limited to      25 union officers.</p>
Page 66	Page 68
<p>1                   Castleman, ScD      2 experience with regard to insulation workers and      3 mesothelioma and lung cancer, right?</p> <p>4     <b>A. Well, he was certainly much more</b>      5 <b>willing than most doctors to speak to the media.</b>      6 <b>He understood that as part of his professional</b>      7 <b>role as a public health professional.</b></p> <p>8     Q. And he spoke to --</p> <p>9     <b>A. But to say that he was successful,</b>      10 <b>well, I think this needs to be explained before</b>      11 <b>it can be simply answered.</b></p> <p>12    It's certainly true that he was      13 successful in doing a number of interviews with      14 the media and getting coverage on the various      15 types of media. But whether he was successful      16 in reaching the ordinary working people in this      17 country is another question.</p> <p>18    It's certainly great to get all      19 those articles he got in the New York Times and      20 stuff like that, but there are a lot of people      21 in this country that don't read the New York      22 Times or Wall Street Journal or the other      23 journals and newspapers and magazines that      24 Selikoff was quoted in.</p> <p>25     So I just want to be careful about</p>	<p>1                   Castleman, ScD      2        MR. WALKER: The first part      3 about suggesting.      4 BY MR. FISCHER:      5        Q. Are you suggesting that the      6 meetings -- let me ask it another way: Are you      7 suggesting that the meetings at which      8 Dr. Selikoff addressed members of the insulators      9 union were limited to union officers?</p> <p>10    <b>A. I don't know one way or the other,</b>      11 <b>but there were meetings that were held someplace</b>      12 <b>in the United States, and they were generally</b>      13 <b>attended by business agents and people like</b>      14 <b>that.</b></p> <p>15        I suppose that people from the      16 union local in the city where the meeting was      17 held would have been free to come if they were      18 off work that day and they could make it. I      19 don't really know.</p> <p>20    Q. And that's all I'm trying to find      21 out, you know, in terms of any limitation on who      22 could attend, you don't know one way or the      23 other?</p> <p>24        <b>A. That's right.</b>      25        MR. WALKER: Just to see if</p>

Page 69	Page 71
1                   Castleman, ScD 2                   Mr. Modesitt is awake, a good 3                   illustration of that point goes like 4                   this: Bobby Knight is in Chicago 5                   playing and he needs a new suit. 6                   So he goes into a tailor and 7                   the tailor looks at him and says, 8                   "Well, we can make you a suit." He 9                   says, "I believe you're about a 42 10                  regular." 11                  And Bobby says, "No, no." He 12                  says, "How can that be?" He says, 13                  "My tailor in Bloomington says I'm a 14                  44 long." 15                  At which time the tailor in 16                  Chicago says, "You're not such a big 17                  man in Chicago as you are in 18                  Bloomington." 19                  Just wanted to check on you, 20                  Ray. 21                  THE WITNESS: Okay, why don't 22                  we give the reporter a break. I 23                  think we've been going for an hour. 24                  MR. FISCHER: Sure. 25                  (Whereupon at 1:25 p.m., a	1                   Castleman, ScD 2                   health hazards of asbestos exposure during the 3                   course of the physical examinations that they 4                   provided to those workers? 5 <b>A. I don't know what they told the</b> 6 <b>workers during the physical examinations.</b> 7                  Q. Have you ever tried to investigate 8                  what the workers were told during those physical 9                  examinations? 10 <b>A. No.</b> 11                 Q. You spoke to Dr. Selikoff before he 12                 had died; is that correct? 13 <b>A. I spoke to Dr. Selikoff on a number</b> 14 <b>of occasions between 1971 and 1992 when he died.</b> 15                 Q. Did you ever talk to him about 16                 whether or not the Insulators Union participated 17                 in any way of the funding of this study? 18 <b>A. No.</b> 19                 Q. Did you ever talk to him about what 20                 the insulators were told about the health 21                 effects of asbestos by Dr. Selikoff? 22 <b>A. I don't know what he told me about</b> 23 <b>that.</b> 24                 Q. I'm asking you whether you spoke 25                 about that with Dr. Selikoff.
Page 70	Page 72
1                   Castleman, ScD 2                   recess was taken until 1:33 p.m.) 3                   (The deposition resumed with 4                   all parties present.) 5                  B A R R Y I. C A S T L E M A N, ScD, resumed and 6                  testified further as follows: 7                  BY MR. FISCHER: 8                  Q. You mentioned that Dr. Selikoff had 9                  the cooperation of the Insulators Union. 10                 Did I understand you correctly that 11                 you don't know whether or not the union 12                 participated in the funding one way or the 13                 other? 14 <b>A. That's right, I don't know.</b> 15                 Q. And I take it you don't know 16                 whether or not the individual union members had 17                 any part of their dues go towards Dr. Selikoff's 18                 study? 19 <b>A. I don't know if there was any</b> 20 <b>arrangement of that kind back in the beginning.</b> 21 <b>I think that that was something that developed</b> 22 <b>later, but I don't know when.</b> 23                 Q. Do you have any knowledge one way 24                 or the other about whether or not Dr. Selikoff 25                 and his team advised the insulators of the	1                   Castleman, ScD 2 <b>A. Oh, I'm pretty sure I didn't. I</b> 3 <b>don't recall ever talking to him about that.</b> 4                 Q. Did you ever ask Dr. Selikoff or 5                 anyone who worked at Mount Sinai about what the 6                 workers were told about the health effects of 7                 asbestos during the course of physical 8                 examinations provided to them? 9 <b>A. No.</b> 10                Q. When I asked you about the Newhouse 11                & Thompson study in '65, you had mentioned that 12                it was your understanding that one of the cases 13                in Dr. Wagner's case series in 1960 may have 14                involved a household exposure; is that correct? 15 <b>A. Right.</b> 16                Q. Anything else prior to '65 that 17                you're aware of where there was a publication of 18                an instance where a person contracted 19                mesothelioma that was attributed to asbestos 20                exposure that had been experienced by a 21                household member in the household member's work? 22 <b>A. Nothing comes to mind.</b> 23                MR. FISCHER: Those are all 24                the questions I have for you, 25                Doctor. Thank you.

<p style="text-align: right;">Page 73</p> <p>1                   Castleman, ScD      2 EXAMINATION      3 BY MR. MODESITT:      4     Q. Doctor, I would like to go back, if      5 I may, and ask a few additional questions on the      6 Illinois Manufacturers' Association.      7     Was the trial that you referred --      8 you referred to a trial, I believe, in 2007.      9     Do you remember what state that was      10 in?      11    <b>A. Virginia.</b>      12    Q. And I know Bobby Hatten is in      13 Virginia. Do you think he might have been the      14 counsel that you worked with on that case?      15    <b>A. Yes.</b>      16    Q. You used two words -- strike that.      17    You referred to two different      18 companies. One you referred to is Crane Co.,      19 and then you referred to a company called      20 John Crane. Do you understand those to be two      21 different and distinct companies?      22    <b>A. I do.</b>      23    Q. Crane Co. made valves and      24 John Crane made gaskets. Is that your      25 recollection?</p>	<p style="text-align: right;">Page 75</p> <p>1                   <b>Castleman, ScD</b>      2     Q. And does the inference come from      3 the fact that John Crane's Manufacturing Company      4 was in Chicago?      5     <b>A. Yes.</b>      6     Q. And I'm just thinking to find out      7 where you get the inference from. That's the      8 inference --      9     <b>A. He was in the Chicago area, I</b>      10 <b>think, yes.</b>      11    Q. So that was the inference in your      12 mind?      13    <b>A. Right.</b>      14    Q. Is there anything that you saw, any      15 documents that you saw that would suggest that      16 American Brake Shoe or American Brake Shoe and      17 Foundry, American Brake Company, Abex, any of      18 those entities in the predecessor history line      19 of Pneumo Abex were involved in the Illinois      20 Manufacturers' Association?      21    <b>A. No, I haven't seen anything. Like</b>      22 <b>I said, I've seen very little documentation, but</b>      23 <b>what I've seen doesn't include any explicit</b>      24 <b>reference to Abex or its predecessors.</b>      25    Q. Okay. But you do believe it</p>
<p style="text-align: right;">Page 74</p> <p>1                   Castleman, ScD      2    <b>A. I believe that those two statements</b>      3 <b>are correct.</b>      4    Q. Did your information reveal that      5 one or that both of those companies were      6 involved with the Illinois Manufacturers'      7 Association back in the early- to mid-1930s?      8    <b>A. The documentation I've seen shows</b>      9 <b>that there was some involvement by Crane Co.</b>      10 <b>The involvement by Crane or John Crane Company,</b>      11 <b>that that company's involvement was inferred.</b>      12    <b>But I have not seen any</b>      13 <b>documentation showing that they were actually</b>      14 <b>involved.</b>      15    <b>(Telephone interruption.)</b>      16    <b>(Discussion off the record.)</b>      17 <b>BY MR. MODESITT:</b>      18    Q. When you say "inferred," what do      19 you mean by that?      20    <b>A. Well, the documentation I've seen</b>      21 <b>indicates that in order for companies to be free</b>      22 <b>from civil suits or exposure to civil suits,</b>      23 <b>they had to accept the jurisdiction of the State</b>      24 <b>Workers' Compensation Law in 1936 when it was</b>      25 <b>enacted.</b></p>	<p style="text-align: right;">Page 76</p> <p>1                   Castleman, ScD      2 included reference to Johns Manville?      3    <b>A. No. I have been told by Mr. Walker</b>      4 <b>that some of the newer documents -- I shouldn't</b>      5 <b>say newer. The documents that he has unearthed</b>      6 <b>refer to Mr. Vandiver Brown being involved. And</b>      7 <b>that's something I don't recall. I just don't</b>      8 <b>recall having seen Johns Manville named in the</b>      9 <b>other documents I've seen, which are few.</b>      10   Q. And you're not saying that he was      11 because you haven't seen any documents yet from      12 Mr. Walker?      13   <b>A. Yes. I think I've been</b>      14 <b>appropriately cautious about what I've said in</b>      15 <b>this deposition about the documents I haven't</b>      16 <b>seen.</b>      17   Q. And so you're not prepared today to      18 impart any information regarding Vandiver      19 Brown's role, if any, with the Illinois      20 Manufacturers' Association at any time,      21 including the mid-1930s?      22   <b>A. Right.</b>      23   Q. I know Mr. Al -- is it Donnay?      24   <b>A. D-O-N-A-Y, Donnay.</b>      25   Q. "Donnay."</p>

<p style="text-align: right;">Page 77</p> <p>1                   Castleman, ScD      2                 He has collected for you, and I      3                 have even purchased from him, various documents      4                 that you have secured.      5                 Is there anything in the      6                 information that he has collected for you that      7                 would include the Illinois Manufacturers'      8                 Association?</p> <p>9                 <b>A. I don't think there are any</b>      10                 <b>Illinois Manufacturers' Association documents in</b>      11                 <b>the -- it's certainly not in the Abex file.</b>      12                 <b>They would probably be in the John Crane file,</b>      13                 <b>whatever I have.</b></p> <p>14                 Q. Or the Crane -- is there a file for      15                 Crane Co.?</p> <p>16                 <b>A. Yes, it might be in the Crane Co.</b>      17                 <b>file, too.</b></p> <p>18                 Q. So if there is anything on that, is      19                 it your best -- I hate to use the word guess,      20                 but best surmise that it would be in one of      21                 those other files?</p> <p>22                 <b>A. Right.</b></p> <p>23                 Q. Because in the list that I just      24                 recently got by e-mail from Mr. Donnay, I looked      25                 and there was no Illinois Manufacturers'</p>	<p style="text-align: right;">Page 79</p> <p>1                   Castleman, ScD      2                 <b>that, you know, scattered news articles that</b>      3                 <b>might appear once in a decade in the Los Angeles</b>      4                 <b>Times or something constitute much in the way of</b>      5                 <b>notice to the ordinary newspaper reader who --</b>      6                 <b>or the ordinary citizen who might not even be a</b>      7                 <b>regular reader of a newspaper.</b></p> <p>8                 <b>But to companies that were in the</b>      9                 <b>business of using asbestos, such articles might</b>      10                 <b>constitute a more significant or a more</b>      11                 <b>noticeable type of alert to see these kinds of</b>      12                 <b>things in the public domain if they're</b>      13                 <b>published, like the Detroit -- one of the</b>      14                 <b>Detroit papers publishing an article about brake</b>      15                 <b>linings being hazardous around 1972 or so.</b></p> <p>16                 <b>So I don't think that would have</b>      17                 <b>come -- that would have maybe gotten more</b>      18                 <b>attention from people who worked for the big</b>      19                 <b>automobile companies than --</b></p> <p>20                 Q. Would you agree --</p> <p>21                 <b>A. -- than others.</b></p> <p>22                 Q. Excuse me, I didn't want to cut you</p> <p>23                 off.</p> <p>24                 Would you agree that with the</p> <p>25                 New York Academy of Science meeting in 1964,</p>
<p style="text-align: right;">Page 78</p> <p>1                   Castleman, ScD      2                 Association.</p> <p>3                 <b>A. Right.</b></p> <p>4                 Q. One of the files that I recently      5                 obtained from Mr. Donnay following our last      6                 deposition, which I believe was in January --      7                 no, whenever it was, this year, 2010, I got a      8                 copy of news articles.</p> <p>9                 Can you tell me what benefit news      10                 articles are with regard to your view of      11                 historical knowledge concerning asbestos, what      12                 part do they play, what role do they play?</p> <p>13                 <b>A. Well, the news articles reflect a</b>      14                 <b>dissemination to a broader circle of society</b>      15                 <b>than medical articles. And so the news articles</b>      16                 <b>in many ways form a kind of notice to whoever</b>      17                 <b>reads them.</b></p> <p>18                 <b>And some of the parties I've been</b>      19                 <b>most interested in have been people like the</b>      20                 <b>Abex executive, who was regularly reading the</b>      21                 <b>New York Times and sending copies of the</b>      22                 <b>articles around to his colleagues in the</b>      23                 <b>company.</b></p> <p>24                 <b>It's -- perhaps -- I see it in a</b>      25                 <b>fairly limited way. I don't -- I don't see</b></p>	<p style="text-align: right;">Page 80</p> <p>1                   Castleman, ScD      2                 that following that time frame, there was a very      3                 large news media dissemination of various      4                 comments and portions of the studies that were      5                 reprinted in newspapers around the country?</p> <p>6                 <b>A. I wouldn't call it very large.</b></p> <p>7                 <b>There were starting to be articles that came out</b>      8                 <b>in newspapers, and I have tried to collect these</b>      9                 <b>articles. And there aren't that many of them,</b>      10                 <b>especially in the 1960s, talking about Selikoff</b>      11                 <b>and his work. I mean, one does see reports in</b>      12                 <b>the Washington Post and in some other major</b>      13                 <b>papers, and then some other not so major papers,</b>      14                 <b>as well. But...</b></p> <p>15                 Q. Is this an effort by the news      16                 media, in your view, to disseminate knowledge      17                 about asbestos disease?</p> <p>18                 <b>A. Well, they just see themselves as</b>      19                 <b>being in the business of reporting the news.</b></p> <p>20                 <b>And so if something comes to their attention and</b>      21                 <b>they consider it newsworthy, and they are</b>      22                 <b>professional journalists in the way that we</b>      23                 <b>expect most newspapers were, then they might</b>      24                 <b>choose to write an article about it.</b></p> <p>25                 Q. In addition to newspaper articles</p>

Page 81	Page 83
<p>1                   Castleman, ScD  2 or news articles, articles also appeared in  3 other forms of journals as opposed to just in  4 medical journals.  5                   Do you agree with that?  6           <b>A. Yes.</b>  7           Q. For example, I believe in -- was it  8 1950, May of 1950, when Dr. Hueper was noted  9 in -- was it Time Magazine or Newsweek?  10          <b>A. Newsweek.</b>  11          Q. Newsweek Magazine?  12          <b>A. Right.</b>  13          Q. And that certainly was not a  14 medical journal, but it was in the section of  15 Newsweek about medicine?  16          <b>A. Right.</b>  17          Q. Is that the kind of information  18 that was intended, in your view, to reach the  19 general population?  20          <b>A. Yes.</b>  21          Q. Or at least those who were reading  22 Newsweek?  23          <b>A. That particular page of Newsweek  24 where in one paragraph asbestos was named, yes.</b>  25          Q. Likewise, you also have files that</p>	<p>1                   <b>Castleman, ScD</b>  2 <b>files clearly in mind, but I do recall seeing</b>  3 <b>some documentation connected with the filing of</b>  4 <b>some of these cases in Illinois in the early</b>  5 <b>'30s.</b>  6           Q. Some number of cases were direct  7 action cases by employees at Waukegan against  8 Johns Manville?  9           <b>A. I think they were employer suits,</b>  10 <b>if that's what you mean by "direct action."</b>  11           Q. Yes.  12           And as a result of the disposition  13 of those cases, that was one of the things that  14 sparked or provided to be the impetus to the  15 1936 act, Occupational Disease Act?  16           MR. WALKER: Are you asking  17 him, was the result of the cases the  18 spark or the fact that those cases  19 were filed? I mean, there's a real  20 difference.  21           MR. MODESITT: My question  22 was what it was, Jim, the result of  23 the case.  24          <b>A. That's the way I heard it.</b>  25          <b>I think that those cases and</b></p>
Page 82	Page 84
<p>1                   Castleman, ScD  2 you referred to as early litigation files, do  3 you recall that?  4           <b>A. No. Maybe you can tell me a little  5 bit more about what it is you're asking about.</b>  6           Q. The files that Mr. Donnay will  7 provide at a cost about early asbestos-related  8 litigation files?  9           <b>A. Right. There is a file of -- I  10 mean, these files are all my files you're  11 talking about. What Mr. Donnay is providing are  12 my files. He scans the documents, he updates  13 the files as new documents come to my attention.  14 So there is, I think, a collection  15 of early -- well, early -- I write about these  16 things and I have sort of gathered some of the  17 records I write about in terms of early product  18 liability cases and early workers' compensation  19 claims.  20           Q. For example, you have collected a  21 group of approximately -- I think there's  22 approximately 30 cases that were filed out of  23 the Waukegan, Illinois plant in the 1930s  24 against Johns Manville?  25          <b>A. Well, again, I don't have these</b></b></p>	<p>1                   <b>Castleman, ScD</b>  2 <b>probably other cases where suits had been</b>  3 <b>brought against employers and which suits were</b>  4 <b>thrown out contributed to the condition leading</b>  5 <b>to the changes in Illinois law.</b>  6           <b>But, again, it's just -- this isn't</b>  7 <b>something that I have done a meticulous study</b>  8 <b>of; I mean, reading all the newspaper stories</b>  9 <b>that were published in the 1930s or doing the</b>  10 <b>other kinds of things one might do in order to</b>  11 <b>investigate that.</b>  12           Q. Do you recall what specific  13 asbestos product was made at Waukegan's plant of  14 Johns Manville?  15          <b>A. Back in the 1930s, probably they  16 made textiles, and they may have made asbestos  17 cement products, but I don't know for sure.</b>  18           Q. Do you know what kind of asbestos  19 fiber was used at the Waukegan plant?  20          <b>A. No.</b>  21           Q. Do you agree, though, that there  22 were people at the Waukegan plant who sought  23 relief by filing suit against Johns Manville,  24 and they sought compensation because they had  25 developed asbestos disease?</p>

Page 85	Page 87
<p>1                   Castleman, ScD</p> <p>2     <b>A. I understand that that's the basic</b>  <p>3     <b>allegations that were involved in these lawsuits</b>  <p>4     <b>we've been talking about.</b></p> <p>5     Q. If you have a lawsuit -- if you      6 work at Waukegan and you have a lawsuit claiming      7 that you have an asbestos disease, would you      8 presume that the individual who filed the      9 lawsuit would therefore know that asbestos could      10 cause a disease?</p> <p>11    <b>A. Yes. I mean, the person is clearly</b>      12 <b>saying that their lung problem, however it was</b>      13 <b>characterized, was at least partly</b>      14 <b>occupationally caused.</b></p> <p>15    Q. By the asbestos?</p> <p>16    <b>A. Well, by the dust that they were</b>      17 <b>exposed to. Again, some of these legal papers</b>      18 <b>are kind of vague about describing the lung</b>      19 <b>condition.</b></p> <p>20    Q. What about the -- were there also      21 cases filed out of the New Jersey plant at      22 Manville against Johns Manville?</p> <p>23    <b>A. Yes.</b></p> <p>24    Q. Again, by employees who worked at      25 the Johns Manville plant in Manville,</p> </p></p>	<p>1                   Castleman, ScD</p> <p>2     <b>A. Yes. I mean, it's not terribly</b>      3 <b>clear, but it's a characterization that's</b>      4 <b>basically fair, that they were trying to --</b>      5 <b>they had -- their editing comments to the</b>      6 <b>authors of the medical report were clearly</b>      7 <b>conditioned by the eminent consideration of</b>      8 <b>workers' compensation law changes by the</b>      9 <b>New Jersey legislature, at least that's the way</b>      10 <b>it was described in the letters.</b></p> <p>11    Q. Can we assume that when the letters      12 were written in 1934, New Jersey did not have,      13 at that time, an occupational disease or a      14 workers' compensation law that would cover      15 asbestos? Is that your understanding?</p> <p>16    <b>A. Well, it appears that civil suits</b>      17 <b>were still a possibility. They didn't have a</b>      18 <b>workers' compensation law that covered</b>      19 <b>asbestosis apparently, but they had -- that the</b>      20 <b>companies were open to civil suits and had, in</b>      21 <b>fact, paid some money to settle such suits in</b>      22 <b>1933 in New Jersey.</b></p> <p>23    Q. So in New Jersey, direct actions by      24 employees were permitted against the employer      25 for work-related dust disease; do you agree with</p>
Page 86	Page 88
<p>1                   Castleman, ScD</p> <p>2 New Jersey?</p> <p>3     <b>A. Right.</b></p> <p>4     Q. And those cases, likewise, were      5 from employees who claimed to have      6 asbestos-induced disease.</p> <p>7     Do you agree with that?</p> <p>8     <b>A. They claimed to have diseases</b>      9 <b>induced by the dust that they breathed at the</b>      10 <b>factory. Just how the dust was described, I</b>      11 <b>don't recall exactly or how the disease was</b>      12 <b>described, either.</b></p> <p>13    Q. You have on other occasions      14 discussed the New Jersey -- strike that. Let me      15 rephrase that.</p> <p>16    You have on other occasions taken      17 issue with various letters in December of 1934      18 between Mr. Hobart and Mr. Brown as it relates      19 to the Lanza study; do you recall that?</p> <p>20    <b>A. Yes.</b></p> <p>21    Q. And one of the issues, as I      22 understand it from your vantage point, is how it      23 may or may not affect the Workers' Compensation      24 law which had not yet been passed in New Jersey.      25 Is that a fair characterization?</p>	<p>1                   Castleman, ScD</p> <p>2 that?</p> <p>3     <b>A. Well, I don't know how clear the</b>      4 <b>law was on all this. I think that the cases I</b>      5 <b>know about were resolved by settlement, and that</b>      6 <b>the company was sufficiently concerned about its</b>      7 <b>exposure to pay off the lawyer who brought the</b>      8 <b>cases so that he wouldn't bother them with any</b>      9 <b>more such cases. That was one of the conditions</b>      10 <b>of the settlement of 11 cases in 1933, according</b>      11 <b>to the board of directors' minutes at Johns</b>      12 <b>Manville.</b></p> <p>13    <b>But just what the law was, I don't</b>      14 <b>know if that was ever resolved formally by the</b>      15 <b>courts. It may have just been nipped in the bud</b>      16 <b>by a settlement by JM.</b></p> <p>17    Q. Do you know whether or not a      18 workers' compensation law or an occupational      19 disease law that was designed to cover asbestos      20 dust was even proposed in the legislature in      21 New Jersey in either 1934, 1935, 1936, 1937 or      22 1938?</p> <p>23    <b>A. No, I don't know what the fate of</b>      24 <b>the legislation described in the Johns Manville</b>      25 <b>letters was. I haven't actually looked into</b></p>

<p style="text-align: right;">Page 89</p> <p><b>Castleman, ScD</b></p> <p><b>what actually took place in the legislature or who did what when.</b></p> <p>Q. Is it fair for me to assume that you have made no inquiry to the legislative committees in New Jersey to determine whether any proposal was even submitted in those years?</p> <p><b>A. That's right.</b></p> <p>Q. Do you know what year New Jersey did, in fact, adopt an occupational disease law, workers' compensation law, that would cover the disease asbestosis?</p> <p><b>A. I believe that was 1945.</b></p> <p>Q. And do you have any information to suggest that prior to that time any proposal had even been offered to the legislature?</p> <p><b>A. I don't know anything about the legislative history of the law between 1935 and 1945.</b></p> <p>Q. I believe you are also familiar with what I will refer to as third-party actions, individuals who were applying insulation products that brought third-party actions against various manufacturers, many of them in California in the mid-1950s; are you</p>	<p style="text-align: right;">Page 91</p> <p><b>Castleman, ScD</b></p> <p><b>these guys worked for 20 or 30 different companies because the contract periods apparently were for specific jobs, not kind of a lifetime job.</b></p> <p>Q. So did many of these cases take place in the 1954, '55, '56 time frame?</p> <p><b>A. One starts to see, or I started to see such cases being filed -- I think the earliest was 1952, and they started out at -- well, it became more numerous after 1960.</b></p> <p>Q. Is it true that in the mid-1950s many of the actual claims, as they were submitted, claimed asbestos dust disease to the lungs?</p> <p><b>A. Yes.</b></p> <p>Q. And would it, therefore, be fair to say that those individuals who were applying those products were, in fact, aware that under some circumstances, asbestos could be hazardous to them and cause lung disease?</p> <p><b>A. Well, I think that's a fair conclusion about the individuals who actually filed the claims, and there are a limited number of them. And I have them in Table 3 of</b></p>
<p style="text-align: right;">Page 90</p> <p><b>Castleman, ScD</b></p> <p>familiar with -- you're familiar with those? For example, the James Whitcomb Riley claim is one that comes to mind.</p> <p><b>A. Those were workers' comp claims.</b></p> <p>Q. Was Riley a comp claim?</p> <p><b>A. Yes.</b></p> <p>Q. And that was in California?</p> <p><b>A. Right. All of those claims in the --</b></p> <p>Q. Okay. I'm sorry.</p> <p><b>A. -- 1950s in that category were the same kind of claim.</b></p> <p>Q. Yes. My apologies, Doctor. My recollection was faulty for a moment.</p> <p>There was a group of -- I don't know, a reasonable group of workers' comp claims filed by employees of contractor units; is that correct?</p> <p><b>A. They were employees of contracting companies --</b></p> <p>Q. Right.</p> <p><b>A. -- or hired by contracting companies and had some kind of employee relationship with these companies. And many of</b></p>	<p style="text-align: right;">Page 92</p> <p><b>Castleman, ScD</b></p> <p><b>Chapter 3 of my book.</b></p> <p>Q. Yes, there's a long table in there. And those were the same cases that you, I believe, refer to as early litigation files under Mr. Donnay's list.</p> <p>At any rate, over the years you've testified about various manufacturing companies, including Johns Manville and the knowledge that they had about asbestos; is that correct?</p> <p><b>A. Yes.</b></p> <p>Q. And you essentially indicated in your testimony that you believe they've known about disease to asbestos going back decades, as far back as the 1930s or '40s; is that fair?</p> <p><b>A. Johns Manville?</b></p> <p>Q. Yes.</p> <p><b>A. Yes.</b></p> <p>Q. You have also done work -- strike that.</p> <p>At some point in time, the year of which I'm not sure I know, either Johns Manville or the trustees in its reorganization sued the United States Government and/or the US Navy?</p> <p><b>A. Right.</b></p>

Page 93	Page 95
<p>1                   <b>Castleman, ScD</b></p> <p>2     Q. And you were hired to -- strike 3     that.</p> <p>4         You were hired to provide testimony 5     and review documents of the US Navy; is that 6     fair?</p> <p>7     <b>A. I was hired to review documents 8     relating to a lot more than the US Navy, but 9     there was some Navy documents included and this 10    was -- I was hired by the Justice Department.</b></p> <p>11    Q. As a result of that review, you 12    provided testimony concerning your findings in 13    that litigation?</p> <p>14    <b>A. I did.</b></p> <p>15    <b>(Whereupon at 2:04 p.m., 16    Mr. Walker leaves the deposition 17    room.)</b></p> <p>18    MR. MODESITT: We'll wait 19    until Jim gets back.</p> <p>20    THE WITNESS: Well, if he's 21    not worried, you can go on. If I 22    think you asked something 23    sufficiently outrageous, I will 24    bring him back.</p> <p>25    MR. MODESITT: Okay.</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2     interesting arguments. They were arguing things 3     like they didn't know because there was an 4     espionage act; they didn't know how the Navy was 5     using all the asbestos insulation they sold in 6     those shipyards all those years because they 7     couldn't get in, until the Government came up 8     with some guy who worked as a watchman and 9     recalled a Johns Manville guy coming around all 10    the time and got waved in and flashed his 11    business card.</p> <p>12         So there are all kinds of things 13    that may be lost to memory or may be 14    misremembered in litigation. There were lots of 15    things Johns Manville said in that case.</p> <p>16    Q. And I'm sure there's lots of things 17    that the US Navy said, also. There's at least a 18    lot of documents from the US Navy about 19    knowledge of asbestos; do you agree with that?</p> <p>20    <b>A. Yes. In the course of preparing 21    its case, Johns Manville came up with whatever 22    documents it could find to show that the US Navy 23    had some awareness about hazards of asbestos 24    during the period of World War II.</b></p> <p>25    Q. Would it be a fair statement,</p>
Page 94	Page 96
<p>1                   Castleman, ScD</p> <p>2     BY MR. MODESITT:</p> <p>3     Q. You have previously testified in 4     response to other counsel in the last -- at 5     least in the last year about comparing knowledge 6     of the US Navy to Johns Manville.</p> <p>7     Do you recall some of those 8     instances?</p> <p>9     <b>A. Well, that was sort of my role in 10    this Court of Claims case. There was the 11    question of some kind of a comparison between 12    the knowledge of the US Government and not just 13    the Navy, but the United States Government 14    generally, which was mainly the Navy and Johns 15    Manville. And that was part of the way the case 16    was framed.</b></p> <p>17    <b>(Whereupon at 2:05 p.m., 18    Mr. Walker re-enters the deposition 19    room.)</b></p> <p>20    Q. In other words, is my understanding 21    correct that Johns Manville was arguing in the 22    case that the US Navy had paramount knowledge to 23    Johns Manville on disease or had more knowledge, 24    maybe that's a better word?</p> <p>25    <b>A. Well, they were making all kinds of</b></p>	<p>1                   Castleman, ScD</p> <p>2     Dr. Castleman, that after your review of the 3     information that the US Navy did in fact have -- 4     that the Navy's information about the hazards of 5     asbestos, while it may not have been more than 6     Johns Manville, was at least equal to Johns 7     Manville?</p> <p>8     <b>A. No.</b></p> <p>9     Q. Have you recently testified to the 10    contrary to that statement?</p> <p>11    <b>A. I don't know exactly what my 12    testimony has been on that particular point, but 13    Johns Manville had knowledge about cancer 14    studies, which were being withheld from 15    publication during World War II, which the 16    US Navy didn't have knowledge of.</b></p> <p>17    Q. How about with regard to the 18    disease asbestosis from asbestos exposure?</p> <p>19    <b>A. No. This is particularly -- I'm 20    talking about cancer from asbestos exposure. 21    But the Navy was certainly aware of 22    the fact that there was a hazard of asbestos 23    that existed in shipyard work; that they were 24    aware of that during World War II, they 25    published on it. For the most part, the Navy</b></p>

<p style="text-align: right;">Page 97</p> <p><b>Castleman, ScD</b></p> <p>1 appears to have published basically what it knew      2 about the potential hazard of asbestos. Even      3 before they had identified cases of asbestos      4 disease in shipyards, the Navy was warning about      5 the danger.</p> <p>Q. Did you find -- I think you've seen      the Fleischer-Drinker report?</p> <p>A. I've spent months of my life      looking at the Fleischer-Drinker report.</p> <p>Q. You've also seen the preliminary      draft of that, have you not?</p> <p>A. I've seen various versions of it,      which might be characterized certainly as      prepublication drafts.</p> <p>Q. And did it seem odd to you in any      way that they deleted one whole shipyard out of      the published version from the prepublication      drafts?</p> <p>A. If you're talking about the Bath      Iron Works and the cases of asbestosis seen at      the Bath Iron Works, I thought that was      something that I would find as a critical      omission.</p> <p>Q. And if industry had done that, you</p>	<p style="text-align: right;">Page 99</p> <p>1 Castleman, ScD      2 cases from Bath Iron Works out of the final      3 Fleischer-Drinker report, that that instant was      4 an effort to conceal that asbestos disease was      5 going on in the Government contract and/or on      6 shipyards?</p> <p>7 A. I don't know. I mean, the      8 Fleischer report did report cases of asbestosis      9 described in the report as moderate and      10 advanced. So they weren't totally trying to      11 conceal the fact that there were cases of      12 asbestosis occurring in shipyards.</p> <p>13 I don't recall if it were Navy      14 yards or private yards, there were two of each      15 in the Fleischer study, but they -- it's not      16 very clear to me. You know, that's why I'm not      17 sure.</p> <p>18 I mean, it might have been -- I      19 mean, Fleischer was -- I'm sorry, Drinker was      20 very close to American industry. He had become      21 a consultant for the American Petroleum      22 Institute in the 15 or so years following World      23 War II. He had been an industry man before he      24 went to Harvard. There may have been some      25 sensitivity on his part about writing a report,</p>
<p style="text-align: right;">Page 98</p> <p>1 Castleman, ScD      2 would have found it certainly critical of the      3 industry, wouldn't you?</p> <p>A. Yes. Sometimes it's hard to      distinguish between incompetence and mendacity,      looking at these documents years later.</p> <p>Q. So do you think the US Navy was      incompetent or just full of mendacity?</p> <p>A. It's hard to say. I mean, they had      seen six cases of asbestosis in one shipyard; in      the Bath Iron Works, four or six cases. They      could have published, at least noted that in the      Fleischer article, but they chose to only make a      very oblique reference to the fact that they had      seen something at the Bath Iron Works. I don't      recall how they characterized it, exactly.</p> <p>Q. Do you think that was an effort to      conceal that there was, in fact, some asbestos      disease at one of the Navy shipyards?</p> <p>MR. WALKER: To what are you      referring by the pronoun "that"?</p> <p>MR. MODESITT: I'll rephrase      it.</p> <p>Q. Do you think that by leaving a      portion of the preliminary draft on the disease</p>	<p style="text-align: right;">Page 100</p> <p>1 Castleman, ScD      2 which could cause problems for companies in the      3 United States.</p> <p>4 But I don't really know. I mean,      5 I'm just -- I look at the -- and I haven't      6 looked at the draft, I don't have it in front of      7 me right now, so I'm not really perfectly clear      8 about what it was that was in the draft that      9 didn't make it into the final report. And I      10 certainly haven't seen any correspondence,      11 internal correspondence ever dug up -- and I      12 think Johns Manville looked real hard for      13 this -- showing anything improper about the way      14 this whole thing was brought to publication.</p> <p>15 Q. If, as the draft had indicated,      16 there were cases of asbestosis in another      17 shipyard that was omitted from the final draft,      18 that's something that you don't think probably      19 should have been done?</p> <p>20 A. No. I mean, if there were six      21 cases of asbestosis in one shipyard and that was      22 the reason that they did this survey, and then      23 they do the survey and they find only three      24 cases in four shipyards, you would think that      25 the six cases in one shipyard that preceded that</p>

Page 101	Page 103
<p>1                   <b>Castleman, ScD</b></p> <p>2 would be significant enough to be included in 3 the preface to the study that they're reporting 4 on about the four shipyards.</p> <p>5                   But, again, I can't really say with 6 any feeling of certainty that there was anything 7 improper done here. It might have just been 8 shoddy, it might have just been kind of a let's 9 not make too much trouble for anybody kind of 10 mentality that people like Drinker, I suspect, 11 may have had. Not out of any evil inclination, 12 just because of the -- you know, the -- he was a 13 man of his time. I mean, there was no 14 government regulation. We were decades away 15 from having anything like OSHA or the 16 Environmental Protection Agency in this country, 17 and industry was pretty much in the driver's 18 seat when it came to the conditions of work as 19 far as health and safety in this country.</p> <p>20                  Q. So you would give more deference to 21 Fleischer and Drinker than you would with 22 someone with a company at that point in time?</p> <p>23                  A. I don't think you can make that 24 comparison. I mean, the specifics of the 25 Fleischer article are -- you know, it's not</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2                  Q. Did you see the correspondence 3 regarding the initial draft that showed they 4 were in compliance with the Navy requirement of 5 prepublication review?</p> <p>6                  A. No. But I mean, I may have seen 7 these documents, I just don't have a perfect 8 recollection of them. I haven't seen a lot of 9 this stuff for years. I mean, this may be all 10 covered. If it's covered in the documents, 11 there's very little point in testing my memory 12 over what they say.</p> <p>13                  Q. Would you agree, Doctor, that over 14 the many decades, concepts of what is generally 15 accepted in the publication business has 16 changed?</p> <p>17                  A. Yes.</p> <p>18                  Q. In other words, what we think about 19 today -- and I always liken it post-Watergate 20 and pre-Watergate, American public today expects 21 more information than it used to, and it's used 22 to getting more information than it used to; do 23 you agree with that?</p> <p>24                  A. I suppose that's true. I think 25 American public has become a lot less naive</p>
Page 102	Page 104
<p>1                   <b>Castleman, ScD</b></p> <p>2 clear. I mean, if I thought there was something 3 clearly rotten about what they did, I wouldn't 4 have any qualms about saying so. But it's not 5 that clear to me whether there was anything, you 6 know, that I would describe as clearly unethical 7 or improper that went on.</p> <p>8                  It might have just been the way 9 people like Drinker wrote things like that up, 10 that doesn't reflect any kind of pressure that 11 was brought by any vested interest or even by 12 Navy or other government bureaucrats. It might 13 have just been the way some people write some 14 things up.</p> <p>15                  Q. Do you agree that the draft had to 16 be submitted to the Bureau of -- one of the 17 US Navy departments before it could be 18 published?</p> <p>19                  A. I don't know what the ritual was 20 for that. I know the Navy published it with -- 21 or it was published by Drinker with a disclaimer 22 from the Navy. So I don't really know what, if 23 any, obligation Fleischer and his coworkers had 24 to even show their work to the Navy as an 25 institution before publishing it.</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2 about some things, and that's one reason why 3 they want more information.</p> <p>4                  Q. And as civilization has advanced 5 with technological advancements, it's made 6 information more retrievable by American public?</p> <p>7                  A. Sure.</p> <p>8                  Q. Do you recall Dr. Borow going to 9 the plant at Manville, New Jersey to do a study?</p> <p>10                 A. I recall Borow publishing about -- 11 I don't know if he ever went to the plant, but I 12 recall him publishing about people dying from 13 mesothelioma that worked at the Manville plant.</p> <p>14                 Q. And do you recall what year he 15 published?</p> <p>16                 A. 1973 was at least one. There might 17 have been one in 1967.</p> <p>18                 Q. And the '73 was a follow-up of the 19 earlier one, was it not?</p> <p>20                 A. I suppose.</p> <p>21                 Q. And in 1967, do you recall that 22 Dr. Borow had received the funds for doing the 23 study from the union who represented the workers 24 at Manville?</p> <p>25                 A. I don't recall that.</p>

<p style="text-align: right;">Page 105</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     Q. Would you agree with me, Doctor, 3     that -- strike that.</p> <p>4     Do you recall seeing various news 5     publications or other publications where there 6     actually were a goodly number of mesotheliomas 7     as a result of employment at the Manville, 8     New Jersey plant?</p> <p>9     <b>A. Well, I remember one publication of 10 Borow's, I don't recall which one it was. I 11 think there was 17 cases reported, including two 12 environmental cases. If you call that a goodly 13 number, then that's what it was. I don't 14 recall, there may have been larger numbers in 15 the subsequent, for the 1973 report, I just 16 don't remember what they were.</b></p> <p>17    Q. When I used the word "goodly," it's 18 certainly above what one would expect in a 19 background level.</p> <p>20    <b>A. Sure.</b></p> <p>21    Q. And was the conclusion that those 22 were occupationally induced?</p> <p>23    <b>A. Except for the two neighborhood 24 cases, I believe that's right.</b></p> <p>25    Q. Would it be a fair assumption,</p>	<p style="text-align: right;">Page 107</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     <b>attention of Dr. Borow, I don't know.</b></p> <p>3     Q. If it turns out that Dr. Borow was 4     actually being supported financially to do this 5     study by the very union of the employees of 6     Manville, would that suggest to you that at 7     least the union who represented the employees 8     there were aware of the difficulty with asbestos 9     and mesothelioma?</p> <p>10    <b>A. Yes.</b></p> <p>11    Q. Have you reviewed any specific 12 information regarding Janet Shipley?</p> <p>13    <b>A. No. My testimony is not case 14 specific.</b></p> <p>15    Q. I know it generally isn't, I just 16 need to ask you this.</p> <p>17    So other than you know that --</p> <p>18    MR. WALKER: She was not in 19     Dr. Borow's study, Mr. Modesitt.</p> <p>20    MR. MODESITT: I'm sure she 21     wasn't.</p> <p>22    Q. Do you know anything about the 23     Eureka plant in Bloomington, Illinois?</p> <p>24    <b>A. I understand that there may have 25     been some exposure in the plant, but I don't</b></p>
<p style="text-align: right;">Page 106</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     Dr. Castleman, that the employees at the 3     Manville plant, when they were being studied, 4     would have known that asbestos would cause 5     mesothelioma?</p> <p>6     <b>A. No.</b></p> <p>7     Q. And why is that?</p> <p>8     <b>A. Because Johns Manville wasn't 9 telling the workers about this. In 1972, one of 10 their plant managers in California characterized 11 it as a hush-hush policy, to not tell workers 12 about the findings of their medical exams. 13 There are other documents on site 14 in my book about Johns Manville withholding that 15 information from its employees.</b></p> <p>16    Q. Do you think Dr. Borow withheld it 17 from the employees who were paying him to do the 18 study?</p> <p>19    <b>A. I don't know if Dr. Borow ever had 20 any contact with any employees. I don't recall 21 him being supported by the union. The people 22 he's reporting on are people that either were 23 dying or had died from mesothelioma. Whether 24 any of these people were alive when they came to the 25 the attention -- when they first came to the</b></p>	<p style="text-align: right;">Page 108</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     <b>know anything about it. I mean, I just heard 3 about this plant, I think, for the first time 4 this morning in a very brief discussion with 5 Mr. Walker.</b></p> <p>6     Q. Do you know anything about the use 7 of asbestos in the construction and manufacture 8 of thermal batteries?</p> <p>9     <b>A. No.</b></p> <p>10    Q. Do you know anything about the use 11 of asbestos in the construction of fuse lines?</p> <p>12    <b>A. No.</b></p> <p>13    Q. Or fuses for grenades or such 14 things?</p> <p>15    <b>A. No, I sure don't.</b></p> <p>16    Q. In your historical research, 17 looking at the literature in the 1930s, in both 18 the United States and in Europe, for example, 19 would you agree, Doctor, that in the 20 United States in the 1930s there was a very vast 21 predominance of chrysotile fiber used in making 22 asbestos products?</p> <p>23    <b>A. I suppose so. I mean, the 24 importation of amphibole asbestos from South 25 Africa only began in the 1930s, or at least only</b></p>

Page 109	Page 111
<p>1                   <b>Castleman, ScD</b></p> <p>2 began to be anything more than trivial</p> <p>3 quantities, I think, in the 1930s.</p> <p>4                   And chrysotile accounted for</p> <p>5 percent of all the asbestos used in the</p> <p>6 United States in the 20th century -- all the</p> <p>7 asbestos used in the world in the 20th century,</p> <p>8 and I think that was true in the United States,</p> <p>9 as well.</p> <p>10          Q. And in the United States, have you</p> <p>11 seen any of the importation data from either the</p> <p>12 US Department of Commerce or from the Bureau of</p> <p>13 Mines on the actual numbers of the imported</p> <p>14 amphiboles in the US prior to 1935?</p> <p>15          A. I think the Bureau of Mines used to</p> <p>16 publish data, but no, not that far back. I</p> <p>17 don't think I've seen any data going back before</p> <p>18 1935. I think Selikoff was even unable to find</p> <p>19 that.</p> <p>20          Q. Actually, in Appendix III to the</p> <p>21 1965 annals, there's a schedule in there for</p> <p>22 1920 -- I think it's 1929 to 1935 on amphiboles</p> <p>23 in the United States.</p> <p>24          A. Oh, there you go. I didn't know</p> <p>25 that.</p>	<p>1                   Castleman, ScD</p> <p>2          A. I don't know if that's true or not.</p> <p>3          Q. Are you familiar with the ownership</p> <p>4 of the crocidolite and amosite mines in South</p> <p>5 Africa in the '30s?</p> <p>6          A. Yes. Well, at least somewhat.</p> <p>7          Q. And are they predominantly owned by</p> <p>8 British interest? Were they?</p> <p>9          A. I think that the British companies</p> <p>10 were prominent in the ownership of the asbestos</p> <p>11 mines in South Africa in the 1920s and '30s in</p> <p>12 the US, I think so.</p> <p>13          Q. And would you agree that even when</p> <p>14 they discussed various asbestos fiber usage at</p> <p>15 the 1964 conference, they referred to the use of</p> <p>16 crocidolite on many products that in the</p> <p>17 United States would have been made with</p> <p>18 chrysotile?</p> <p>19          A. I don't remember that.</p> <p>20          Q. Okay. Fair enough.</p> <p>21          I know you have reviewed many of</p> <p>22 the items of correspondence from</p> <p>23 Raybestos-Manhattan and Johns Manville.</p> <p>24          Would you agree that there was a</p> <p>25 thought process among some of those executives,</p>
Page 110	Page 112
<p>1                   <b>Castleman, ScD</b></p> <p>2          Q. Okay. I didn't -- okay.</p> <p>3          Likewise, are you familiar with the</p> <p>4 fact that in Europe, where the United States</p> <p>5 used mostly chrysotile, there was a very large</p> <p>6 proportion of fiber in Europe on amphiboles in</p> <p>7 the '30s?</p> <p>8          MR. WALKER: Either I missed</p> <p>9 that or something could -- would you</p> <p>10 mind asking that again, Ray?</p> <p>11          MR. MODESITT: No. I'll be</p> <p>12 happy to. I'll be happy to.</p> <p>13          MR. WALKER: The part I -- it</p> <p>14 started out in Europe, and then it</p> <p>15 said United States.</p> <p>16          MR. MODESITT: I'm sorry.</p> <p>17          MR. WALKER: I believe you</p> <p>18 were drawing a distinction, but if</p> <p>19 you did, it missed me.</p> <p>20          MR. MODESITT: No problem.</p> <p>21 BY MR. MODESITT:</p> <p>22          Q. In Europe in the 1930s, would you</p> <p>23 agree, Doctor, that a very large portion of the</p> <p>24 asbestos fiber in Europe was crocidolite and</p> <p>25 amosite?</p>	<p>1                   Castleman, ScD</p> <p>2 in addition to among -- from Dr. Lanza, that</p> <p>3 they believed or wrote that the asbestos problem</p> <p>4 was more severe in England than it was in the</p> <p>5 United States in the 1930s?</p> <p>6          A. I don't know. I mean, they wrote</p> <p>7 letters to that effect, but what they believed</p> <p>8 may be another story.</p> <p>9          I mean, Vandiver Brown, I think</p> <p>10 with some pride of authorship, made reference to</p> <p>11 Lanza's publication suggesting that the</p> <p>12 asbestos problem in the United States, at</p> <p>13 least in his 1935 study, was not as serious</p> <p>14 because it didn't happen to include any people</p> <p>15 who were very disabled, didn't have third -- or</p> <p>16 third-stage asbestosis, didn't have any of those</p> <p>17 cases in the 126 workers that were -- according</p> <p>18 to Lanza -- selected at random by Metropolitan</p> <p>19 Life and Johns Manville and the other companies</p> <p>20 for inclusion in that study.</p> <p>21          Whether they really believed that</p> <p>22 the asbestosis problem was any different in the</p> <p>23 United States than England is another story.</p> <p>24 But some of the correspondence they suggested</p> <p>25 that -- at least that was the company line, that</p>

<p style="text-align: right;">Page 113</p> <p><b>Castleman, ScD</b></p> <p><b>it was a milder problem here. I'm thinking of the Asbestos magazine letters.</b></p> <p>Q. Okay. Do you recall some of the writings by Dr. Gloyne in the 1930s, I believe 1934 was one of them, where he described some of the particularly dusty operations that were conducted in England including mattress beating? Do you recall any of that?</p> <p><b>A. I recall Gloyne publishing a report of a hundred cases of asbestosis in 1934. I don't recall what he said about mattress making in that report.</b></p> <p>Q. Do you recall any comments from Dr. Merewether about the higher level of dust produced by certain processes, such as mattress beating, which was a unique process in England?</p> <p><b>A. I don't recall what Merewether said about mattress beating or mattress making, either. I think he talked about it in at least one of his writings, but I don't remember what he said.</b></p> <p>Q. Okay. Had you seen Plaintiff's Exhibit No. 824, which is the minutes, September 16, 1959 board minutes of Johns</p>	<p style="text-align: right;">Page 115</p> <p><b>Castleman, ScD</b></p> <p>testimony of Dr. Philip Enterline. Do you know Dr. Enterline?</p> <p><b>A. I know who he was, I don't know if I met him. Maybe he's still around.</b></p> <p>Q. I honestly don't know. I know he was at Pittsburgh. I really don't know if he's still around or not. He was around in 1986, because I was in a grand rounds with him. But in any event, one of the exhibits, which I have retrieved from a former case involving Mr. Walker is a letter between you and Dr. Enterline.</p> <p>Do you have a recollection of that?</p> <p><b>A. No.</b></p> <p>Q. Did you work with or assist, consult with in any way Dr. Enterline when he was doing some review for the AIA in 1976 -- '76-'77 time frame?</p> <p><b>A. No.</b></p> <p>Q. Whatever he did or didn't do was done without your participation; is that a fair statement?</p> <p><b>A. Yes.</b></p> <p style="text-align: right;"><b>(Witness and counsel confer.)</b></p>
<p style="text-align: right;">Page 114</p> <p><b>Castleman, ScD</b></p> <p>Manville before Mr. Walker had provided them to you?</p> <p><b>A. No. I'm just seeing this for the first time.</b></p> <p>Q. Have you ever seen any other Johns Manville board minutes?</p> <p><b>A. Yes.</b></p> <p>Q. I'm sorry?</p> <p><b>A. I've seen other Johns Manville board minutes.</b></p> <p>Q. And do you remember what years they might have been?</p> <p><b>A. 1933, where they paid off that lawyer in New Jersey not to bring any more cases.</b></p> <p>Q. And where did you see that?</p> <p><b>A. I don't know, it's been around for 30 years.</b></p> <p>Q. Was that in the Manville depository, to your recollection, or not?</p> <p><b>A. I think I saw it before there was a Manville depository.</b></p> <p>Q. Mr. Walker has also in this case indicated an intention to use some limited</p>	<p style="text-align: right;">Page 116</p> <p><b>Castleman, ScD</b></p> <p>Q. Do you know what kind of plant the products made at the facility? I thought -- I think it was in California?</p> <p><b>A. Yes, it looks like an asbestos cement pipe plant.</b></p> <p>Q. Are you familiar with that plant at all?</p> <p><b>A. (Perusing document.) Watson, I don't recall a plant in Watson in anything I've read about Johns Manville, so I don't know exactly what plant this is.</b></p> <p>MR. WALKER: I'm going to give you something here in a minute, Mr. Modesitt, but feel free to do something else while I look.</p> <p>MR. MODESITT: I'm just about done.</p> <p>MR. WALKER: Okay.</p> <p>BY MR. MODESITT:</p> <p>Q. Just a couple of more questions, Dr. Castleman.</p> <p>I know that you -- well, on other occasions you have actually kept track of the number of cases in which you've testified during</p>

<p style="text-align: right;">Page 117</p> <p>1                   Castleman, ScD  2 the year.  3                   Have you done that in 2010?  4           <b>A. Yes. I think I've done 21 trials</b>  5 <b>this year.</b>  6           Q. And how many depositions?  7           <b>A. Not quite 50, I think, but the year</b>  8 <b>is young.</b>  9           Q. And I understand you testified  10 yesterday in California?  11           <b>A. Yes.</b>  12           Q. And that was in the Brady  13 (phonetic) case?  14           <b>A. Right.</b>  15           Q. And you're testifying tomorrow up  16 here?  17           <b>A. I believe so.</b>  18           Q. And what is the name of that case,  19 please?  20           <b>A. Hmm. (Perusing document.)</b>  21 <b>Carroll, two "Rs," two "Ls."</b>  22           Q. Was your testimony yesterday and is  23 your testimony tomorrow on the general area of  24 state of the art?  25           <b>A. Yes. It's about the stuff I</b></p>	<p style="text-align: right;">Page 119</p> <p>1                   <b>Castleman, ScD</b>  2 <b>cases in the state of Illinois are a different</b>  3 <b>type, a different subclass, I guess, of</b>  4 <b>testimony that I give about the public health</b>  5 <b>and corporate history of asbestos.</b>  6           Q. Are the cases in -- are the  7 jurisdictions in and around central Illinois  8 where the claims have to do with conspiracy, is  9 that the only place that you had given that type  10 of testimony?  11           <b>A. I think so. I think I've been in</b>  12 <b>other cases over the years where conspiracy was</b>  13 <b>included as one of the issues, but my impression</b>  14 <b>is that -- because it wasn't really necessary to</b>  15 <b>prove conspiracy to recover whatever damages</b>  16 <b>would have been recoverable anyway, that</b>  17 <b>plaintiffs generally decided to not bother with</b>  18 <b>that.</b>  19           Q. And in the last two or three years,  20 have you provided that type of testimony  21 anywhere else other than Illinois?  22           <b>A. No.</b>  23           MR. MODESITT: Thank you,  24 Doctor. I think that's all the  25 questions I have at the moment.</p>
<p style="text-align: right;">Page 118</p> <p>1                   <b>Castleman, ScD</b>  2 <b>testified about in asbestos litigation.</b>  3           Q. You recognize that the testimony  4 that you provide in Bloomington, Illinois in  5 cases where the allegations concern a civil  6 conspiracy is a different type of testimony  7 generally than the normal state of the art; is  8 that -- I'll rephrase.  9           MR. WALKER: Hopefully it's  10 all truthful, I mean...  11           MR. MODESITT: That wasn't  12 even part of my question.  13           MR. WALKER: No doubt  14 diminished by skillful  15 cross-examination, but I'm not on  16 the committee to agree that it's a  17 different type.  18 BY MR. MODESITT:  19           Q. Generally speaking, Dr. Castleman,  20 is the testimony you provide on the conspiracy  21 allegations in McLean County, Illinois different  22 from the testimony you generally provide to  23 juries where the issue is simply on state of the  24 art and duty to warn?  25           <b>A. I would say that the conspiracy</b></p>	<p style="text-align: right;">Page 120</p> <p>1                   <b>Castleman, ScD</b>  2           MR. WALKER: Before you  3 leave, I do want to call your  4 attention to the fact that, either  5 prior to in the course of direct, I  6 might bring to Dr. Castleman's  7 attention Plaintiff's Exhibit  8 No. 824-A, which is a copy of  9 Manville's 1959 annual report.  10           And at the beginning on  11 page 9 of that, there's sort of a  12 discussion of asbestos-containing  13 pipe. And in particular, on  14 page 10, there's a reference that  15 Watson, California is one of the  16 places where pipe is made.  17           And then on page -- well,  18 somewhere later there's a picture of  19 the board of directors with  20 Mr. Biggers in the left order.  21           MR. MODESITT: Thank you,  22 Mr. Walker. I appreciate you doing  23 that.  24           May I ask, is that the same  25 number that you've always used on</p>

<p style="text-align: right;">Page 121</p> <p>1                   Castleman, ScD 2 that exhibit? Or do they -- because 3 I know I have a whole group that 4 you've given me previously. 5                   MR. WALKER: Yes. The 6 Manville annual reports were 7 normally in the three-hundreds, but 8 I just paired 824 and 824-A together 9 because back in my sheet showing 10 days, they just looked so good as a 11 pair, probably a perversion that I 12 wouldn't want to -- 13                   MR. MODESITT: But it's part 14 of the file that you have tendered 15 on other occasions, right? 16                   MR. WALKER: Yes, I have 17 distributed that 1959 annual report 18 on other occasions. 19                   MR. MODESITT: Just for the 20 record, if you intend to use that 21 box again, you don't -- I have the 22 last one you gave me. You don't 23 need to burn another tree, tear 24 another tree down. 25                   That's all I have.</p>	<p style="text-align: right;">Page 123</p> <p>1                   Castleman, ScD 2                   <b>A. 1929 was the first year that they</b> 3 <b>were sued. Mr. Johns may have died from</b> 4 <b>asbestosis in 1898, but I've never been able to</b> 5 <b>establish that. He had some kind of a lung</b> 6 <b>problem when he died.</b> 7                   Q. When should railroads have known 8 the link between asbestos exposure and lung 9 cancer? 10                  <b>A. Oh, I think that the railroad</b> 11 <b>doctors probably should have known about that by</b> 12 <b>the end of the 1940s. They were -- railroads</b> 13 <b>had a very large presence in the field of</b> 14 <b>industrial medicine. They were clearly aware of</b> 15 <b>the Industrial Hygiene Foundation's annual</b> 16 <b>meetings and apparently some of them attended.</b> 17                  Q. You're aware of -- and you talked 18 in the past about references to the medical and 19 surgical meetings' minutes, and you specifically 20 refer in response to the question I just asked 21 you to Dr. Ochsner -- O-C-H-S-N-E-R -- in his 22 1958 speech, do you recall that speech? 23                  <b>A. Right. So by 1958, clearly the</b> 24 <b>railroads, at their annual meeting of company</b> 25 <b>doctors, are talking about lung cancer as an</b></p>
<p style="text-align: right;">Page 122</p> <p>1                   Castleman, ScD 2 EXAMINATION 3 BY MR. KURZ: 4                  Q. Dr. Castleman, a few questions for 5 you about the railroad. 6                  <b>A. Go ahead.</b> 7                  Q. Your book devotes a portion to the 8 railroads. 9                  Have you done any recent research 10 or reviewed any new documents in the past, let's 11 say, two years regarding the railroad's 12 historical knowledge, that type of thing? 13                  <b>A. No.</b> 14                  Q. Doctor, what is your opinion as to 15 when -- and this is United States, when the 16 railroads should have known that asbestos 17 exposure could cause the disease asbestosis, 18 what decade or time frame? 19                  <b>A. 1930s.</b> 20                  Q. And that's based upon your review 21 of what document or documents? 22                  <b>A. The documents cited in my book.</b> 23                  Q. Johns Manville, when would Johns 24 Manville have known about the capacity of 25 asbestos to cause asbestosis?</p>	<p style="text-align: right;">Page 124</p> <p>1                   Castleman, ScD 2 asbestos disease. 3                  I was just wondering if, you know, 4 the should-have-known goes back before that, but 5 in terms of actual knowledge you've got 1958 as 6 a nice clear date. 7                  Q. And then when should railroads have 8 known about asbestos and mesothelioma, the link 9 between those two? 10                 <b>A. Well, I just think they should have</b> 11 <b>been paying attention to what was in the medical</b> 12 <b>and scientific literature about asbestos and</b> 13 <b>should have picked up something by the 1960s</b> 14 <b>about mesothelioma.</b> 15                 Q. When was the first study in the 16 literature confirming mesothelioma in railroad 17 workers? 18                 <b>A. I think one of the first cases was</b> 19 <b>in Wagner's report in 1960; a guy was</b> 20 <b>maintaining insulation on steam locomotives.</b> 21                 There was also a report called 22 "Asbestosis in Rhodesia" that was published in 23 the Rhodesian railroads. It was -- I don't 24 recall, it was probably cited in the book in the 25 railroad section. (Perusing book.)</p>

<p style="text-align: right;">Page 125</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     Q. Doctor, you're welcome to look, but 3     my question was inartful.</p> <p>4         I really meant to ask you</p> <p>5     United States literature, as opposed to the 6     South African stuff that you have.</p> <p>7     <b>A. Well... Okay, well, then, I can't 8     add anything, I think, to what I've already 9     said.</b></p> <p>10    Q. Would you agree that the first 11    United States study would have been Mancuso in 12    the '80s?</p> <p>13    <b>A. I think that was the first time 14    that there were medical reports of mesothelioma 15    in railroad workers in the United States 16    published. I don't think there were earlier -- 17    there may have been earlier cases, but if there 18    were, I can't recall where they would have been 19    published or when.</b></p> <p>20    Q. All right. Doctor, you talk about 21    in your book you're involved in a 1975 study 22    regarding brake workers and how they respond to 23    warnings; is that right?</p> <p>24    <b>A. Right.</b></p> <p>25    Q. DC, Baltimore area, you went out</p>	<p style="text-align: right;">Page 127</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     <b>the survey did not appear to have changed their 3     work practices. And as I say, I mean, in the 4     Baltimore study, the notices were sent to 5     management, the workers may never have been 6     told.</b></p> <p>7         Q. And in the DC study, was the 8     warnings given directly by the company to the 9     workers, or was it given by outside people such 10    as yourself?</p> <p>11    <b>A. As I understand it, the public 12    health workers who were taking these brochures 13    around were approaching the mechanics themselves 14    at these workplaces.</b></p> <p>15    Q. Did you draw any conclusions that 16    it might be more effective in terms of the 17    effectiveness of a warning if it comes directly 18    from the employer itself, as opposed to an 19    outside party?</p> <p>20    <b>A. It didn't occur to me that the 21    employers would do anything absent outside 22    pressure.</b></p> <p>23    Q. Doctor, you've been asked about the 24    Kaylo advertisement from -- I forget the year -- 25    1955, wherein its referenced as being nontoxic?</p>
<p style="text-align: right;">Page 126</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     and discussed with some of the workers the 3     hazards of asbestos, lung cancer risk, death, 4     that type of thing; is that right?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. How many workers did you tell?</p> <p>7     <b>A. Well, in Baltimore, we notified the 8     managements. And in Washington, the public 9     health officials handed leaflets directly to 10    mechanics.</b></p> <p>11    Q. And then you waited a few months 12    and went back to see how well the workers were, 13    I guess, heeding the warnings that were given; 14    is that right?</p> <p>15    <b>A. At Selikoff's recommendation, we 16    sent college students around to do follow-up 17    surveys and just to get some basic information 18    that we could publish about the response to our 19    notification effort.</b></p> <p>20    Q. And is it fair to say that 21    unfortunately a substantial number of those 22    workers were not heeding the warnings that had 23    been given?</p> <p>24    <b>A. Well, in both studies we found that 25    some people took our advice, but the majority in</b></p>	<p style="text-align: right;">Page 128</p> <p>1                   <b>Castleman, ScD</b></p> <p>2     <b>A. '56.</b></p> <p>3     Q. '56. Excuse me.</p> <p>4         Would you agree that a customer or 5     a user of Kaylo could have read that ad and 6     concluded that the product was safe to use?</p> <p>7     <b>A. Yes.</b></p> <p>8     Q. And would that apply to someone 9     such as a railroad that may have utilized that 10    product, at least based upon that advertisement 11    alone?</p> <p>12    <b>A. Right. If they read that 13    advertisement, didn't know anything else about 14    asbestos being hazardous, that would have been a 15    reasonable conclusion.</b></p> <p>16    Q. In this matter, Mr. Walker has 17    indicated a desire to utilize the testimony of a 18    gentleman named Robert Winstead.</p> <p>19         Have you ever read or reviewed 20    Mr. Winstead's testimony in the past?</p> <p>21    <b>A. No, I don't think I have.</b></p> <p>22    Q. That name is not familiar to you?</p> <p>23    <b>A. No.</b></p> <p>24    Q. And so as to what he may have said 25    or testified to, you're not aware?</p>

<p style="text-align: right;">Page 129</p> <p>1                   Castleman, ScD      2   <b>A. That's right.</b>      3    Q. One thing I would ask you about      4    him -- and Mr. Walker will correct me if I'm      5    wrong, but one of the pieces of testimony he      6    gave is that he was a railroad worker working      7    next to Unarco, at the yards there that you're      8    familiar with. And he observed individuals come      9    out of Unarco in dust emanating out of the      10   Unarco plants, specifically by the dumpster.      11   And one of the things that the railroad workers      12   did, they complained about it, and one of their      13   supervisors went over to Unarco to complain.      14   My only question to you is: Is      15   that a good practice on the part of the railroad      16   to go and complain to Unarco about this dust      17   condition?      18   <b>A. It sounds like it. But I mean,</b>      19   <b>this is all so vague, the way you're describing</b>      20   <b>it. What was the nature of the complaint? What</b>      21   <b>did they -- what knowledge did they express in</b>      22   <b>their -- in making their complaint? I mean, was</b>      23   <b>it just a nuisance they were talking about, or</b>      24   <b>was it something more serious that they were</b>      25   <b>raising with the people at Unarco? The question</b></p>	<p style="text-align: right;">Page 131</p> <p>1                   Castleman, ScD      2   and 1950s; is that a fair statement?      3   <b>A. Yes. Not the only use, but it was</b>      4   <b>a major use.</b>      5    Q. Right. And of course their      6    consumption or use of asbestos products would      7    have dropped off substantially once they moved      8    to diesel locomotives; is that also a fair      9    statement?      10   <b>A. Right.</b>      11   Q. And if, in fact, you'll assume for      12   me that GM&amp;O was the first railroad to      13   dieselize, you wouldn't criticize them for being      14   the company to essentially substitute out an      15   asbestos-containing locomotive with a diesel      16   locomotive?      17   <b>A. I'm sure that's not why they did</b>      18   <b>it, but no, I wouldn't criticize them.</b>      19   Q. You've seen the General Managers      20   documents, of course, you refer to them in your      21   book?      22   <b>A. Right.</b>      23   Q. Is that the term you use, "General      24   Managers"? Some people called them home      25   documents?</p>
<p style="text-align: right;">Page 130</p> <p>1                   Castleman, ScD      2   is very vague. I just want to be cautious in      3   how I try to answer it.      4   Q. I understand.      5   The GM&amp;O Railroad, in the past      6   you've indicated you don't know what those      7   initials stand for.      8   Do you today?      9   <b>A. Initials for what?</b>      10   Q. The GM&amp;O Railroad.      11   <b>A. Right. I don't --</b>      12   Q. Those initials, do you know what      13   that stands for, sir?      14   <b>A. No, I don't know now either.</b>      15   Q. You've been asked this in the past,      16   but I understand -- strike that.      17   Are you aware that GM&amp;O was the      18   first railroad to be completely dieselized? By      19   that I mean, steam locomotives retired and      20   diesel locomotives took over?      21   <b>A. I don't know if that's true or not.</b>      22   Q. If you assume for me -- well, first      23   of all, your book does indicate that the lagging      24   around steam locomotives is the primary usage of      25   asbestos by American railroads back in the 1940s</p>	<p style="text-align: right;">Page 132</p> <p>1                   Castleman, ScD      2   <b>A. I think I know what you're talking</b>      3   <b>about.</b>      4   Q. We'll use "General Managers," if      5   that's all right, Dr. Castleman.      6   A few questions about that.      7   Do you have any information that      8   GM&amp;O Railroad was a member of the General      9   Managers Association?      10   <b>A. Not unless it's reflected in the</b>      11   <b>documents, I don't recall whether they were</b>      12   <b>listed or not.</b>      13   Q. Do you have any information of      14   whether those documents, the occupational      15   disease file, the General Managers documents,      16   whatever you choose to call them, were ever      17   given to the GM&amp;O?      18   <b>A. I don't know.</b>      19   Q. In the past, you've indicated      20   you've seen somewhere around 20 pages of the      21   General Managers documents; is that about right?      22   <b>A. I think so.</b>      23   Q. Do you believe you have any more or      24   you just have the 15 to 20 pages?      25   <b>A. I don't recall if I have any more</b></p>

Page 133	Page 135
<p>1                   <b>Castleman, ScD</b></p> <p>2   <b>or not. I don't think so.</b></p> <p>3       Q. Now, the General Managers documents</p> <p>4    were authored in part in response to the new</p> <p>5    Illinois law that was coming into play that you</p> <p>6    mentioned earlier today; is that right?</p> <p>7       MR. WALKER: Wait a minute.</p> <p>8       MR. KURZ: I can re-ask.</p> <p>9       MR. WALKER: Yes. I don't</p> <p>10      know who they are offered to.</p> <p>11      MR. KURZ: It was a poor</p> <p>12      question.</p> <p>13    <b>BY MR. KURZ:</b></p> <p>14      Q. Was one of the topics discussed in</p> <p>15     the Occupational Disease Act -- and you'll agree</p> <p>16     with me, there are a lot of different topics</p> <p>17     talked about in there, a lot of different</p> <p>18     diseases and conditions?</p> <p>19       MR. WALKER: In the OD Act or</p> <p>20     in the General Managers documents?</p> <p>21       MR. KURZ: General Managers</p> <p>22     documents. Excuse me.</p> <p>23       MR. WALKER: I'm tending to</p> <p>24     object to this question because I</p> <p>25     would prefer one that started and</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2    railroads at least believed that this law did</p> <p>3    not apply to them or would not apply to them?</p> <p>4       <b>A. Not that I can recall. It seems</b></p> <p>5       <b>like they were focused on dealing with it as</b></p> <p>6       <b>a -- a law that did apply to them.</b></p> <p>7       Q. Do you recall any references in the</p> <p>8    documents where they thought -- railroads</p> <p>9    specifically thought that they were different</p> <p>10     than the textile industries, and so the law</p> <p>11     would not apply to them?</p> <p>12       <b>A. No.</b></p> <p>13       Q. Do you recall any discussion in the</p> <p>14    documents that because of the size of railroad</p> <p>15    shops in general, that being that they were</p> <p>16    considerably larger than most manufacturing</p> <p>17    facilities, that the restrictions that would be</p> <p>18    put in place by the statute should be lessened</p> <p>19    as to the railroad?</p> <p>20       <b>A. I don't recall anything about that.</b></p> <p>21       Q. You discuss in your -- just a few</p> <p>22    more questions, Doctor -- in your book, the nine</p> <p>23    recommendations that are both part of the</p> <p>24    General Managers disease file -- or occupational</p> <p>25    disease file, excuse me, and the AAR documents,</p>
Page 134	Page 136
<p>1                   <b>Castleman, ScD</b></p> <p>2    stopped.</p> <p>3       Mark, you're nothing but a</p> <p>4    gentleman, but this one just has got</p> <p>5    my indicators buzzing so loud that</p> <p>6    even with my level of hearing, I can</p> <p>7    hear it.</p> <p>8       MR. KURZ: Let me back up and</p> <p>9    stick to one question.</p> <p>10   <b>BY MR. KURZ:</b></p> <p>11      Q. Do you agree that the General</p> <p>12     Managers documents discuss a variety of</p> <p>13     different diseases?</p> <p>14       <b>A. Well, they certainly discuss</b></p> <p>15       <b>additional things to asbestosis.</b></p> <p>16      Q. That's all I was asking. All</p> <p>17     right.</p> <p>18       And do the documents tend to</p> <p>19     reflect -- that's a terrible phrase.</p> <p>20       Do the documents discuss this new</p> <p>21     law coming into place in Illinois?</p> <p>22       <b>A. Yes.</b></p> <p>23      Q. And do you -- as you read through</p> <p>24     the documents, is there anything in those</p> <p>25     documents that indicates to you that the</p>	<p>1                   <b>Castleman, ScD</b></p> <p>2    correct, those nine steps?</p> <p>3       <b>A. Well, I have quoted verbatim the</b></p> <p>4       <b>nine-point program that was developed in the</b></p> <p>5       <b>General Managers Association documents.</b></p> <p>6       Q. And one of the things stated in</p> <p>7    those nine recommendations, I believe it's the</p> <p>8    last one, talks about publication of those</p> <p>9    warnings and of the hazards of asbestos, is that</p> <p>10     right, because of the capacity of claims, the</p> <p>11     capacity of potential for claims?</p> <p>12       <b>A. Well, as I recall it, it said</b></p> <p>13       <b>something about keeping this -- let me just look</b></p> <p>14       <b>at it. (Perusing document.)</b></p> <p>15       All right. This is what it says:</p> <p>16       <b>"It is suggested that the above recommendations</b></p> <p>17       <b>be communicated directly to the foreman</b></p> <p>18       <b>involved. Publicity on the above might suggest</b></p> <p>19       <b>a making of claims."</b></p> <p>20       Q. My question to you, then, about</p> <p>21     that statement: Have you seen any documents in</p> <p>22     the occupational disease file that would reflect</p> <p>23     that the railroad's concern wasn't well-based</p> <p>24     claims; that is, a person truly with that</p> <p>25     disease process, but was rather as to the filing</p>

<p style="text-align: right;">Page 137</p> <p>1                   Castleman, ScD 2 of false claims? 3           <b>A. I don't think you can make</b> 4           <b>inferences based on -- I certainly don't think</b> 5           <b>you can make inferences of morality on the part</b> 6           <b>of the companies based on that statement.</b> 7           Q. I'm sorry. You certainly don't 8 think, is that what you said? 9           <b>A. Yes. I mean, I don't think that --</b> 10          <b>there's nothing in here that, you know, we're</b> 11          <b>perfectly willing to pay off legitimate claims,</b> 12          <b>we're just worried about false claims here. It</b> 13          <b>seems like they're --</b> 14          Q. Let me be clear. 15          <b>A. They're speaking about the making</b> 16          <b>about the making of claims as a single entity of</b> 17          <b>concern, and it's consistent with other</b> 18          <b>corporate documents I've seen from the 1930s</b> 19          <b>expressing apprehensiveness about claims in</b> 20          <b>general.</b> 21          Q. Doctor, I did not mean to infer 22 that those nine recommendations is where I'm 23 drawing that inference. 24          I'm asking if you've seen any other 25 documents contained within the 400 and whatever</p>	<p style="text-align: right;">Page 139</p> <p>1                   <b>Castleman, ScD</b> 2           <b>Railroad Trade Association Library in Washington</b> 3           <b>on L Street from the mid-'60s.</b> 4           <b>Whatever I have is available from</b> 5           <b>Albert Donnay in the railroad files. And there</b> 6           <b>hasn't been anything added in 20 years.</b> 7           Q. That was my next question. Very 8 good. 9           MR. KURZ: All right, Doctor, 10          those are the questions I have. 11          Thank you for your time. 12          MR. WALKER: Are we done? 13          Wonderful. 14          MR. FISCHER: No, no. I have 15 less than five minutes of follow-up 16 on some questions that the railroad 17 asked. 18          THE WITNESS: Let me take a 19 break. 20          (Whereupon at 2:57 p.m., a 21 recess was taken until 3:01 p.m.) 22          (The deposition resumed with 23 all parties present.)</p>
<p style="text-align: right;">Page 138</p> <p>1                   Castleman, ScD 2 number pages that comprise the occupational 3 disease file that would lead to that conclusion. 4           <b>A. I just don't know, you know, how</b> 5           <b>you can infer anything from this statement based</b> 6           <b>on other documents in the file. I just can't</b> 7           <b>think of anything else in the file that, so to</b> 8           <b>speak, picks up where this leaves off and</b> 9           <b>explains it in more detail. If there is such a</b> 10          <b>document, I would love to see it.</b> 11          Q. And finally, have you -- the AAR 12 documents, you realize they run from the '20s 13 through the '60s, I believe. 14          What is the -- what do you have? 15 How much do you possess, if you know? 16          <b>A. You mean in my collection of</b> 17          <b>documents?</b> 18          Q. In your collection of documents, 19 sir. 20          <b>A. Well, I collect -- I have excerpts</b> 21          <b>from the ones that talk about asbestos from</b> 22          <b>1932, I think, until 1958 that we got at the</b> 23          <b>Interstate Commerce Commission Library.</b> 24          And then there were a few others 25          <b>that were found, some from the railroads, the</b></p>	<p style="text-align: right;">Page 140</p> <p>1                   Castleman, ScD 2           B A R R Y I. C A S T L E M A N, ScD, resumed and 3 testified further as follows: 4           EXAMINATION 5          BY MR. FISCHER: (Continued.) 6          Q. You were asked some questions about 7 1956 advertisements that described Kaylo as 8 nontoxic, and you were asked some questions by 9 Mr. Kurz about what a customer could have 10 concluded, right? 11          A. Yes. 12          Q. Have you ever spoken to anyone that 13 saw that advertisement at any time prior to 14 1970? 15          A. No. 16          Q. Have you ever spoken to anyone who 17 was not a lawyer who ever saw that 18 advertisement? 19          A. Well, I've never seen any -- I've 20 never talked to anybody who ever saw the 21 advertisements in Petroleum Engineer or that 22 flier that you're probably referring to. I 23 mean, these are things that were published in 24 the 1950s, and I haven't talked to anybody who 25 read either of those things.</p>

Page 141	Page 143
1 <b>Castleman, ScD</b>	1
2       Q. And I'm happy to do them together.	2                   C A P T I O N
3                   The Petroleum Engineer article	3
4       you're referring to is from 1952, right?	4       The Deposition of BARRY CASTLEMAN, ScD, taken in the
5 <b>A. Right.</b>	5       matter, on the date, and at the time and place set out
6       Q. And then there's the advertisement	6       on the title page hereof.
7       from 1956?	7
8 <b>A. Right.</b>	8       It was requested that the deposition be taken by the
9       Q. And you're not aware of anyone who	9       reporter and that same be reduced to typewritten form.
10      ever saw either of those things	10
11      contemporaneously, right?	11      The Deponent will read and sign the transcript of said
12 <b>A. Right. I mean, these things were</b>	12      deposition.
13 <b>all published by the time I was ten years old.</b>	13
14      Q. And you've never spoken or seen --	14
15      let me put it into two separate questions.	15
16      You've never spoken to any customer	16
17      of Owens-Illinois or Owens Corning, for that	17
18      matter, who saw that advertisement?	18
19 <b>A. That's right.</b>	19
20      Q. And you never spoke to anybody	20
21      about what conclusions they drew from either of	21
22      those two uses of the word "nontoxic"?	22
23 <b>A. True.</b>	23
24      MR. FISCHER: Those are all	24
25      the questions I have. Thank you.	25
	Page 142
1                   Castleman, ScD	1
2       MR. MODESITT: I think we're	2                   C E R T I F I C A T E
3       done.	3
4       (Whereupon at 3:03 p.m., the	4       STATE OF _____:
5       deposition was concluded.)	5       COUNTY/CITY OF _____:
6	6
7	7       Before me, this day, personally appeared
8	8       BARRY CASTLEMAN, ScD, who, being duly sworn, states that
9	9       the foregoing transcript of his Deposition, taken in the
10	10      matter, on this date, and at the time and place set out
11	11      on the title page hereof, constitutes a true and
12	12      accurate transcript of said deposition.
13	13
14	14
15	15                   _____ BARRY CASTLEMAN, ScD
16	16       SUBSCRIBED and SWORN to before me this _____ day of
17	17       _____, 2010, in the jurisdiction aforesaid.
18	18
19	19
20	20       _____ My Commission Expires      Notary Public
21	21
22	22
23	23
24	24
25	25

Page 145

Page 147

1 DEPOSITION ERRATA SHEET  
2  
34 RE:  
5 FILE NO. 10-L-38  
6 CASE CAPTION: JANET SHIPLEY and JAMES SHIPLEY vs.  
7 PNEUMO ABEX CORPORATION, et al.  
8 DEPONENT: BARRY CASTLEMAN, ScD  
9 DEPOSITION DATE: SEPTEMBER 28, 201010 To the reporter:  
11 I have read the entire transcript of my Deposition taken  
12 in the captioned matter or the same has been read to me.  
13 I request for the following changes be entered upon the  
14 record for the reasons indicated.  
15 I have signed my name to the Errata Sheet and the  
16 appropriate Certificate and authorize you to attach both  
17 to the original transcript.18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
23 BARRY CASTLEMAN, ScD  
24  
251 C E R T I F I C A T E  
2  
34 S T A T E O F N E W Y O R K )  
5 ) ss.  
6 C O U N T Y O F K I N G S )7  
8 I, Androniki Samaras, a Shorthand (Stenotype)  
9 Reporter and Notary Public for the State of New York, do  
10 hereby certify that the foregoing Deposition, of the  
11 witness, BARRY CASTLEMAN, ScD, taken at the time and  
12 place aforesaid, is a true and correct transcription of  
13 said Deposition.14 I further certify that I am neither counsel  
15 for nor related to any party to said action, nor in any  
16 wise interested in the result or outcome thereof.17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 this 8th day of October, 2010.19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 ANDRONIKI SAMARAS  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25

Page 146

1 I N D E X  
2  
3 Witness: BARRY CASTLEMAN, ScD  
4 Page  
5 Examination by MR. FISCHER 3  
6 Examination by MR. MODESITT 73  
7 Examination by MR. KURZ 122  
8 Examination by MR. FISCHER 140  
9  
10  
11  
12 N O E X H I B I T S  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25